

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL CASE NO.
AMD-04-029

WILLIE MITCHELL,
SHELTON HARRIS,
SHELLY WAYNE MARTIN,
SHAWN GARDNER,

Defendants

VOLUME XXVIII OF XXXVII
Wednesday, November 19, 2008
Baltimore, Maryland

Before: Honorable Andre M. Davis, Judge
And a Jury

Appearances:

On Behalf of the Government:
Robert Harding, Esquire
Michael Hanlon, Esquire
On Behalf of Defendant Mitchell:
Laura Kelsey Rhodes, Esquire
Michael E. Lawlor, Esquire
On Behalf of Defendant Harris:
Gerard P. Martin, Esquire
Paul Flannery, Esquire
On Behalf of Defendant Martin:
Thomas L. Crowe, Esquire
James G. Pyne, Esquire
On Behalf of Defendant Gardner:
Adam H. Kurland, Esquire
Barry Coburn, Esquire

Reported by:
Mary M. Zajac, RPR
Room 5515, U.S. Courthouse
101 West Lombard Street
Baltimore, Maryland 21201

1 (Proceedings at 10:27 p.m.)

2 THE COURT: Counsel, for the reasons we discussed on
3 the record last night, Mr. Harris will not be joining us and the
4 other defendants will be joining us in the customary way. I
5 consulted with Deputy Akers this morning, as I did last night,
6 and the arrangement for audio and video display of these
7 proceedings to the Sixth Floor have been completed. And so
8 that's where we stand.

9 I understand there are a couple of issues. Before I
10 move to counsel, Mr. Harding, I have looked and looked and looked
11 and looked and looked, again and again and again, at that felony
12 murder instruction and it's not making sense to me. Malice
13 aforethought is not an element of felony murder. But as I read
14 your proposed supplemental, you're asking the Court to instruct
15 that malice aforethought is an element of felony murder.

16 So when you get a chance, if you could just take a look
17 at that. We don't need to --

18 MR. HARDING: Sure, Your Honor.

19 THE COURT: -- focus on it now. But I think what
20 you're asking, if I understand, is an instruction on first degree
21 murder, first degree premeditated murder, and in the alternative
22 an instruction on felony murder, which is murder committed in the
23 course of the perpetration of one of the predicate felonies. But
24 the whole point of felony murder is that there doesn't need to be
25 an intent to kill.

1 So we'll have time to revisit that. The great Judge
2 Sand may have it wrong, you think?

3 MR. HARDING: Well, no. He has, if you look at Chapter
4 41, malice aforethought is included in the felony murder
5 instruction. It's Instruction 41-13. But the way malice
6 aforethought is defined is a killing is done with malice
7 aforethought if it is done deliberately and with the intent to
8 kill another person or if it results from the perpetration or
9 attempt to perpetrate a crime.

10 THE COURT: That's exactly right, and it's exactly
11 wrong. The more modern view is that, first of all, we've gotten
12 away from malice aforethought altogether, of course. Although,
13 of course, there's still some of that lingering. But even before
14 we got rid of malice aforethought, we got rid of the idea that a
15 murder committed in the perpetration of a predicate felony was a
16 substitute for malice aforethought. That's really 18th century
17 thinking.

18 But I see what you're getting at. But you didn't give
19 me that entire instruction and maybe that's what confused me.
20 Your proposal doesn't say malice aforethought can be either this
21 or the other.

22 MR. HARDING: I probably assumed it was the same malice
23 aforethought instruction that was in the premeditated murder
24 count and I apologize.

25 THE COURT: That's quite all right. I'll take a look

1 at it. My preference would be not to use malice aforethought at
2 all.

3 MR. HARDING: Okay.

4 THE COURT: And I think that's a correct statement of
5 the law. It's simply a foreseeable murder, and in some states
6 not even a foreseeable murder, that arises out of an underlying
7 felony. So I'll work on that.

8 But I think other than that, my instructions, all 124
9 pages of them, are ready to go. And I'll get them to you.
10 Anybody have anything on the verdict sheet? Perhaps Belinda, you
11 should call, I'm not sure the marshal understood that I was ready
12 for him to come down. I thought they were on their way down.

13 Mr. Coburn, welcome back.

14 MR. COBURN: Thank you so much, Your Honor.

15 THE COURT: Good to see you. Good to have you back.

16 MR. COBURN: Very kind of Your Honor to say that.

17 THE COURT: How did those depositions go?

18 MR. COBURN: Not too bad.

19 THE COURT: Is your client pleased?

20 MR. COBURN: He is. So far, anyway.

21 THE COURT: Good.

22 MR. COBURN: The case is actually a very interesting
23 case, sort of touch and go at the moment.

24 THE COURT: I look forward to you telling me about it.

25 MR. COBURN: Your Honor, I just wanted to tell you my

1 mom is still hanging in there, but she seems to be slipping in
2 and out. And I was wondering how you would feel about the
3 possibility of my heading down to Houston after the last closing
4 argument.

5 THE COURT: You well know my answer to that, Mr.
6 Coburn. Frankly, I'm glad to have you back today but I would
7 have excused you today.

8 MR. COBURN: Very kind of Your Honor.

9 THE COURT: But it's good for you to be here.

10 MR. COBURN: Appreciate it very much.

11 THE COURT: Certainly. Mr. Martin, I think I know what
12 you're going to address and I think I prefer to wait until the
13 other defendants arrive before we get into that, if you don't
14 mind.

15 MR. MARTIN: No, I don't mind, Your Honor.

16 THE COURT: All right. I think we can take care of
17 your issue, Ms. Rhodes.

18 MS. RHODES: Thank you, Your Honor. A couple of quick
19 procedural things. One is there's an exhibit that the Court will
20 recall that I did not end up introducing that was the, my
21 proposed changes to the transcript of Damita Green. And I'd just
22 like to have that marked as an exhibit.

23 THE COURT: You mean the marked-up copy?

24 MS. RHODES: The marked-up copy, exactly.

25 THE COURT: Okay. Do you want to give that a number?

1 MS. RHODES: Can that be 5, Ms. Arrington?

2 THE COURT: I noticed that in that regard the exhibit
3 lists, and I thank the government particularly for the work you
4 put in in finalizing your exhibit list. But I do notice that
5 the, I guess the government list as well as the defense lists
6 seemed to contain, not seem to, do contain exhibits that were
7 marked for identification only. And I suppose there's no way
8 around that. But I would have preferred that if an exhibit were
9 marked for identification only, that that exhibit not show up on
10 the list that's going into the jury.

11 MR. HARDING: We can take care of that, Your Honor. We
12 already have plans for meeting with Ms. Arrington after court
13 today or at lunch. And we're going to continue working on the
14 exhibit list.

15 THE COURT: Oh, okay. Good. That's right. They're
16 not going to get the exhibits until tomorrow. I would prefer
17 that the exhibits marked for identification not be on the list so
18 that the jury's not looking for them and we don't get notes about
19 where they are, and we have to explain, although I will mention
20 it to the jury. Yes, Mr. Harding.

21 MR. HARDING: We haven't been working on the defense
22 exhibit list.

23 THE COURT: No, I understand that. I understand that.

24 MS. RHODES: I will mark ID only on this exhibit
25 sticker.

1 THE COURT: Yes. Okay. So what I would ask counsel to
2 do tonight is go back with some white-out and just delete the
3 exhibits that are marked for identification only from the exhibit
4 list that we're sending in to the jury.

5 MS. RHODES: Okay. I think Ms. Arrington is already
6 doing that because she gave us a master list last night with
7 everybody's.

8 THE COURT: Great. Yes, Ms. Rhodes.

9 MS. RHODES: Your Honor, there's another exhibit that I
10 realize I neglected to introduce. That was related to Mr.
11 Powers, Coach Powers. It's the Nassau Community College records.
12 And I would ask the Court's permission to mark that for admission
13 at this time, even though the record has closed.

14 THE COURT: Is that the one where he got the A's and
15 B's?

16 MS. RHODES: Yes. How did you guess?

17 THE COURT: Because I saw the other one. Okay. What
18 number are you going to give that, Ms. Rhodes?

19 MS. RHODES: Six? Four? Six. It will be Mitchell
20 Six, Your Honor.

21 THE COURT: All right. And I don't think we need to do
22 that in front of the jury. You think, Ms. Rhodes? It will be on
23 the list and you only have nine or ten exhibits.

24 MS. RHODES: I can just mention it without showing
25 anything.

1 THE COURT: Okay.

2 MS. RHODES: Thanks, Your Honor. And the other issue,
3 I don't know if the Court received my e-mail this morning.

4 THE COURT: I did. Yes. And I want to give you an
5 opportunity now. I don't think Mr. Mitchell needs to be here for
6 you to make that legal argument.

7 MS. RHODES: Okay. My position, Your Honor, is that
8 because the government had not objected, and I don't know if the
9 government saw my e-mail this morning, I sent the judge an e-mail
10 indicating that I was going to do an oral motion requesting that
11 he reconsider his decision about Davey D as an expert. You did
12 see it? Okay.

13 My concern is that because the government had not
14 objected to his, to his expertise and the Court had indicated
15 that you were admitting him conditionally as an expert, my
16 understanding was that he was, his expertise was not the issue.
17 It was whether or not the testimony was going to match up with a
18 topic that was, what was consistent with expertise in this, as
19 applied to this case.

20 THE COURT: Well, if I can interrupt you just very
21 briefly, because I just want to make sure your premise is
22 defensible. I think it was Mr. Hanlon who handled this. Mr.
23 Hanlon, I thought in your written opposition or your motion in
24 limine you did challenge expertise. But I may be wrong about
25 that.

1 MR. HANLON: I certainly understood it that way, Your
2 Honor. And I believe --

3 THE COURT: You don't remember what docket number it
4 is, do you?

5 MR. HANLON: No, I do not.

6 THE COURT: Let me pull it up very quickly, just so Ms.
7 Rhodes can make her argument on a sound foundation.

8 MS. RHODES: Your Honor, I think when he filed that,
9 they didn't have my client's CV or his proffer.

10 THE COURT: But my point is simply that the government
11 filed a written motion in limine. I made it pretty clear without
12 an express ruling on the government's motion that I was going to
13 permit you to proceed, which is exactly what I did, what we did.
14 And when Mr. Hanlon got up to, after you tendered the witness, I
15 mean, it was pretty clear to him that the Court was not prepared
16 at that time to exclude the witness for lack of qualifications.
17 So Mr. Hanlon did a very minimal kind of voir dire of the
18 witness.

19 And I think you and Mr. Hanlon fully understood when I
20 said we were proceeding conditionally, that the matter was still
21 up in the air.

22 MS. RHODES: As to his qualifications?

23 THE COURT: No. As to the admissibility of his
24 ostensible expert opinion testimony. Okay? I see what you're
25 saying, and I don't have a problem with it. But I just want to

1 make clear that I did not decline to accept him as an expert
2 because he was unqualified. And I know that's not the whole of
3 your argument.

4 But remember, I actually said to him, I forget if the
5 jury was still in the courtroom, I actually said to him, I think
6 he does have certain expertise and he is likely to be qualified
7 in the future as an expert. But for purposes of this case, both
8 on the combination of qualifications and on the basis of
9 traditional Rule 702 criteria, and on the basis of Daubert
10 reliability, as well as on the basis of traditional helpfulness
11 to the jury, the Court was not persuaded that he should be
12 accepted as an expert. But I basically gave you 90% of what you
13 wanted by saying I would permit the jury to consider the
14 evidence.

15 I didn't strike his testimony. I permitted the jury to
16 consider it as lay opinion testimony, which is I think the term I
17 actually used. That's the term of the rule.

18 So I'm going to let you make your record. I just again
19 wanted to make sure that your premise that the government hadn't
20 objected to qualifications was sound. And I think the government
21 did. But let me just take a moment and pull up the government's
22 motion in limine.

23 You don't have a hard copy, do you, Mr. Hanlon?

24 MR. HANLON: I believe Mr. Harding might, Your Honor.

25 MS. RHODES: I think, Your Honor, my concern is

1 regardless of what they said in that, at that time they were not
2 addressing, they were not addressing Mr. Cook's qualifications.
3 They didn't have his CV yet.

4 (Defendants Mitchell, Martin and Gardner enter the
5 courtroom.)

6 THE COURT: I see your point. Okay. Thank you, Mr.
7 Harding.

8 Okay. You're right. Part of the government's argument
9 is that you hadn't turned over the material required by the
10 rules. So anyway, why don't you go ahead and make your motion?

11 MS. RHODES: I guess I gather from what you said a
12 minute ago was part of your decision was based on his
13 qualifications. That was part of the mix?

14 THE COURT: It was certainly part of the mix based on
15 what I heard in the courtroom. Now, if you want to now by
16 proffer bolster -- and the record will reflect that the
17 defendants except Mr. Harris have entered the courtroom -- I'm
18 happy to have you do that, if you can do it briefly, and I'm sure
19 you can. But yes, it's always a part of the mix.

20 There is no hard, clear solid line between a proposed
21 expert's qualifications and traditional Rule 702 factors, Daubert
22 factors, and helpfulness to the jury. There is obviously a lot
23 of overlap, as you well know. And so an expert, a witness can be
24 an expert in a number of different fields but his or her
25 expertise doesn't fit the issues in a particular proceeding.

1 I had a mechanical engineer several years ago who was a
2 brilliant Ph.D. professor who claimed to be able to talk about
3 snow blowers. He didn't know anything about snow blowers. He's
4 a brilliant mechanical engineer but that doesn't make him, that
5 didn't make him a proper expert in a case where the issue was
6 what went wrong with a particular snow blower.

7 He never even operated one. He never built one. He
8 never designed one. And his only experience with snow blowers
9 was testifying in a couple of snow blower cases. So that's an
10 extreme example, I think. But you see what I'm getting at?

11 So if you've got additional writings and things you
12 want to put in the record that bolster Mr. Cook's expertise, you
13 certainly can go ahead and do that. But I think my ruling was
14 pretty clear. It was 90% of his testimony was not helpful to the
15 jury, 80% of his testimony was based on anecdotal,
16 impressionistic, real world experience in the industry, not
17 study, not examination. There was a significant mixture of
18 political issues. And of course, I don't mean that as criticism.
19 When one talks about the politics of culture, the culture of
20 politics and the entertainment industry, it all mooshes together.

21 And if this were a suit by Jay-Z against Def Jam or
22 something, he may well have plenty to say. But this is a
23 criminal case in which the government has never suggested that
24 Shakedown Entertainment was anything other than a legitimate
25 record producing company. The government's never disputed that.

1 It's, it was a legitimate Maryland corporation. Mr. Mitchell was
2 the CEO, as Tony Montana described it. I wish one of you asked
3 him, what is a CEO?

4 So it's a legitimate company that actually produced rap
5 songs, and at least the beat of some of them wasn't all that bad.
6 Of course, you say that about any rap song because the beat's the
7 same in all of them, it seems.

8 So that's not what this case is about. As I said, I
9 admitted the rap lyrics as coconspirator statements. And I just
10 don't know what, what Mr. Cook could have said about any of that.

11 So I permitted you to put it on. I called him a
12 teaching expert. The jury learned something about the business.
13 But I don't think what they learned needed to come from an
14 expert. Everybody knows whether you're going to open a 7-Eleven
15 or a gas station or Ma and Pa store, you need capital, you need
16 to get customers, you need to have a good product, you need to be
17 aggressive, you need to talk to the right people. That's what
18 you do when you go into business. So juries don't need to be
19 educated about those kinds of factors.

20 When it came to the lyrics, that's when we got into --
21 this was his testimony. I assumed that rap lyric are false. And
22 then, of course, he was cross examined by Mr. Hanlon on many
23 instances in which people did sing about the actual crimes they
24 committed.

25 So I don't want to prolong this. If you've got

1 additional qualifications to bolster his expertise, you go ahead
2 and state what they are. The Court's ruling was actually based
3 on the actual testimony as it was received by the Court.

4 MS. RHODES: Okay. Thank you, Your Honor. As to the
5 issue of his saying "I assume", I think as somebody with his
6 expertise if he says "I assume they're all false", he means as an
7 expert, based on his experience in the field. He's not just
8 saying "I'm guessing." So I don't take that, his use of the word
9 "assume" in that context as something that is I'm guessing,
10 because he repeated that sentiment over and over when asked about
11 a variety of lyrics.

12 On the issue of his credentials, I would like to, which
13 I really did not believe were at issue yesterday in light of the
14 fact that the government, after voir dire, did not continue to
15 object, after its own voir dire, did not continue to object at
16 all, and previously had not objected based on his credentials.
17 Clearly had had his information in time to prepare because they
18 have looked at writings of his.

19 One thing I want to quote from is the book he mentioned
20 to Mr. Hanlon that he was a contributor to. It's called Be a
21 Father to Your Child, BAF, edited by April R. Silver. And it is
22 published by Soft Skull Publications.

23 His contribution here is in the context of an
24 interview. And the introduction by the editor is as follows:

25 There are few people who know as much about the history

1 and culture of hip-hop as journalist, activist, and media expert,
2 Davey D. Talking with him is like diving into the encyclopedias
3 of hip-hop and black urban culture. He is a forward thinking
4 scholar and I thought it best to have someone with his scope of
5 knowledge and wisdom to illuminate some oft overlooked
6 perspectives on this topic.

7 He has been a father figure in his own household and
8 within his own community. He is respected for his cutting edge,
9 unapologetic analysis and his ability to connect dots that most
10 people can't even see, a perfect foundation for setting up the
11 context of these collected works.

12 That's one person's take on his level of expertise.

13 He also, Your Honor, in addition to some of the things
14 he mentioned, he has spoken at Harvard University and Oberlin
15 University. He's been featured on several shows on BET. He was
16 asked by Essence Magazine to write an article for them on hip-hop
17 in 2006, which was published. That was based on readings of
18 thing he had done and hearing him, parts of his speech in DC at a
19 previous conference in 2005 on African-American perspectives,
20 where he was on a presentation with Paul Porter, who's a program
21 director at BET.

22 He's also been asked to be a guess curator on a
23 hip-hop, on a hip-hop museum presentation in California, the
24 largest exhibit that was ever held at that museum.

25 He's been at the university of Madison and has

1 consulted with their Hip-Hop in Academia program, spoken as part
2 of that program as well.

3 He's appeared with Chuck D of Public Enemy and others
4 on various panels. And when the hip-hop archives of Stanford
5 University, which he had worked with, was moved to Harvard
6 University, he continued working with that program. And one of
7 the professors he worked with at Stanford has asked him to
8 co-teach her class on hip-hop culture and politics at San
9 Francisco State starting next semester.

10 He's worked at the Smithsonian or as a consultant with
11 the Smithsonian on hip-hop culture. He's spoken there. He has
12 spoken in Beirut, Lebanon on issues regarding hip-hop culture and
13 the African-American experience with hip-hop in America.

14 He has been a contributor to white papers put out by
15 The Future of Music Coalition on net neutrality and on payola and
16 urban music.

17 He is speaking later this week at the State of the
18 Black World Conference in New Orleans, which is a three-day
19 conference. He'll be on the future leadership panel and on the
20 hip-hop panel.

21 He's also spoken on a panel for the black congressional
22 caucus in 2004 or 2005 regarding hip-hop issues.

23 THE COURT: If he had a Ph.D., I think we'd call him a
24 cultural anthropologist. That's what he is. With a, with a
25 subspecialty in hip-hop and rap music. Which would be great. In

1 the right case, I'd hire him as an expert. But he had nothing to
2 offer in this case of value to the jury beyond some background.
3 He didn't even tell the jury what BET is.

4 MR. LAWLOR: Who doesn't know that?

5 MS. RHODES: He's not TV.

6 THE COURT: Believe me, there are lots of people out
7 there who don't have any idea what BET is.

8 MR. MARTIN: I bet you there's nobody on that jury --
9 we'll poll them when the trial is over.

10 THE COURT: All right. We'll do that. We'll do that.
11 His testimony was full of jargon and lingo. Look, I'm not being
12 critical. I'm really not being critical.

13 MS. RHODES: Yes, you are.

14 THE COURT: No, I'm not. No, I'm not.

15 MS. RHODES: Yes, you are.

16 THE COURT: No, I'm not. You know, lots of people have
17 spoken at Harvard University.

18 MS. RHODES: I haven't.

19 THE COURT: I'm impressed that he has but that doesn't
20 qualify someone to be an expert.

21 MS. RHODES: But Your Honor, Your Honor made a
22 comparison to someone who's a GM plant manager. He's got a
23 certain expertise. Okay?

24 THE COURT: Exactly. And I stand by that, by that.

25 MS. RHODES: But a GM plant manager who is expert in

1 what he does is not also asked to consult nationally on how
2 plants run. This, this person has been. He is a nationally
3 known consultant and expert in this field.

4 THE COURT: Okay. Ms. Rhodes, I think you've made your
5 record.

6 MS. RHODES: All right. Thank you, Your Honor.

7 THE COURT: Okay. Mr. Martin. Mr. Kurland.

8 MR. KURLAND: Your Honor, I just want to make sure that
9 deletion on Gardner Number Three is done before the stuff goes to
10 the jury. We talked about that. That's blotting out, the
11 government agreed, blotting out the reference to the State v.
12 Gardner state case. That hasn't physically been done yet. But I
13 just want to make sure that --

14 THE COURT: The only way we're going to be sure it's
15 done is when you look at the document before Ms. Arrington sends
16 it in to the jury.

17 MR. KURLAND: Okay. I will do so at the next break.
18 Thank you, Judge.

19 THE COURT: While you're there, Mr. Kurland. I didn't
20 understand your e-mail. The fourth superseding indictment --

21 MR. KURLAND: Oh, the discussion --

22 THE COURT: You were looking at the third superseding.

23 MR. KURLAND: No, I wasn't. But in our discussion last
24 night when there was some discussion and some disagreement
25 concerning the term "Mitchell enterprise", there was some

1 reference I believe the Court made saying that in the fourth
2 superseding indictment, in Paragraph Three --

3 THE COURT: Right.

4 MR. KURLAND: -- Shakedown is listed. That was the
5 case in the third superseding indictment. It is not in the
6 fourth superseding indictment.

7 THE COURT: Yes, it is.

8 MR. KURLAND: Judge, it isn't. I'm looking right at
9 the --

10 THE COURT: It says, Paragraph Three.

11 MR. KURLAND: Yes.

12 THE COURT: The Randallstown/Park Heights organization,
13 including its leadership, members and associates, constituted an
14 enterprise, and so on. That is a group of individuals and an
15 entity associated in fact. What do you think the entity is
16 there? It's Shakedown Entertainment.

17 MR. KURLAND: Your Honor, two things. The first is, in
18 the third superseding indictment the government specifically put
19 in that list Shakedown. I disagree that the reference to an
20 entity associated in fact means Shakedown. They are referring
21 to --

22 THE COURT: What entity, what entity is the indictment
23 referring to if not Shakedown Entertainment, Limited?

24 MR. KURLAND: I believe, consistent with the language
25 in the statute, the reference to an entity associated in fact is

1 the Randallstown/Park Heights organization. And I believe the
2 government would agree as well.

3 THE COURT: No. Mr. Kurland, that makes no sense
4 whatsoever syntactically, grammatically, logically. That is --
5 right?

6 MR. KURLAND: Shakedown is --

7 THE COURT: And constituted an enterprise, comma, that
8 is. In other words, the meaning of the enterprise is, quote, "a
9 group of individuals and an entity associated in fact. And so my
10 instructions tell the jury, as I told you I would do last
11 night -- in fact, I should probably read it to you although I
12 didn't print out a copy -- my instructions say specifically that
13 the enterprise here is the Randallstown/Park Heights
14 organization. Specifically, Shakedown Entertainment Limited is a
15 Maryland corporation; thus, a formal legal entity. Shakedown
16 Entertainment Limited is not the enterprise charged in this case.
17 That's what I tell the jury.

18 So whether you want to call it an affiliate or an
19 associate, it's up to you. But it clearly, clearly, this
20 language in Paragraph Three says the enterprise consisted of the
21 individuals, including the defendants, but not limited to the
22 defendants, and the entity. And the only entity having any
23 relevance whatsoever to this case is Shakedown Entertainment
24 Limited.

25 MR. KURLAND: Your Honor, I don't have the 1961, the

1 1961 in front of me. But I believe the references to
2 organizations that are actually incorporated are not referred to
3 in the statute as entities associated in fact.

4 THE COURT: I'm not suggesting the word "entity" -- and
5 you keep, keep divorcing, and I understand why, you keep
6 divorcing the words "entity associated in fact" from the words "a
7 group of individuals and." You want to separate those but it's
8 one phrase. And that's the enterprise. A group of individuals
9 and an entity associated in fact.

10 MR. KURLAND: Well, again, I don't believe, I'm not
11 sure that it's going to effect the way I argue the case. But for
12 the record, I want to make an objection that it's our position
13 that that is an incorrect statement of the law and that Shakedown
14 Entertainment, which was taken out of the third superseding
15 indictment, is not what is referred to as an entity associated in
16 fact.

17 I just want that on the record. I hope it doesn't ever
18 end up at the Fourth Circuit but I wanted to make that clear. I
19 don't believe that it will affect --

20 THE COURT: I don't think so. I don't think so. You
21 want to say anything about that, Mr. Hanlon?

22 MR. HANLON: No, Your Honor.

23 THE COURT: Okay. Mr. Flannery, good morning.

24 MR. FLANNERY: Good morning, Your Honor. Very briefly.
25 Regarding your concern about exhibits that were marked for

1 identification only, Mr. Martin and I noticed that we think there
2 are, we have a couple of exhibits on our list, in this final list
3 here that we believe were admitted but are what looks like here
4 probably thought at this point to be identification only. So if
5 we could just take that up with Ms. Arrington at the break.

6 THE COURT: Of course.

7 MR. FLANNERY: Your Honor, if you remember yesterday,
8 when Mr. Cook, prior to him taking the stand, I had proffered
9 that I had premarked several sets of lyrics and a cartoon. I had
10 those here and would like to just submit those for
11 identification. They're marked for identification only.

12 THE COURT: Sure. What's the number?

13 MR. FLANNERY: Premarked Harris 10 through 14.

14 THE COURT: Harris 10 through 14 for identification
15 only. All right.

16 MR. FLANNERY: Thank you, Your Honor.

17 THE COURT: Mr. Martin.

18 MR. MARTIN: Your Honor, not to prolong this any more,
19 but I just wanted to put something on the record about last
20 night.

21 THE COURT: Of course. And Mr. Martin, here's what I
22 would ask.

23 MR. MARTIN: That's the next thing I was going to get
24 at, I think what you're going to get at right now, which is what
25 we say to the jury, if anything.

1 THE COURT: Not only what we say to the jury, and I've
2 got some thoughts on that but, frankly, what we say on the record
3 in open court. Because what I anticipate is that Mr. Harris will
4 not be joining us again until we get a verdict. And so I tried
5 to be careful a few minutes ago when I first came out to limit my
6 remarks, basically incorporated what was said last night when we
7 were the only ones here.

8 MR. MARTIN: Can I come to the bench, Your Honor, and
9 do this?

10 THE COURT: Perhaps that's best. Yes.

11 MR. MARTIN: Thank you, Your Honor.

12 THE COURT: Why don't you and Mr. Harding come to the
13 bench?

14 (Bench conference on the record.)

15 MR. MARTIN: This is more in the nature of a plea to
16 you as opposed to -- and you're probably right. I shouldn't say
17 it in front of the other guys. What I was going to say was that,
18 to try to, I spent a lot of time trying to put this in
19 perspective.

20 I got a client, as you know, hasn't talked to me for
21 three years except occasional banter in the courtroom. But I do
22 know that, that he believes, and he doesn't understand what you
23 and I understand, I understand, I know he believes that he's
24 being railroaded here. That's what he thinks. It's obvious.
25 You see the way they react, they all believe that.

1 And so yesterday is kind of a culmination, I know he
2 didn't feel good, number one. He wasn't feeling well. Number
3 two, he, he sat here and he watched, I'm not criticizing, he
4 watched you let the expert testify and you didn't say beforehand
5 that he wasn't going to be an expert. And then after he
6 testified, without any input from anybody, you did what you did.
7 And I'm not saying you're wrong; I'm just saying you did it.

8 They hear that and they say, Here he goes again, he's
9 going off on us, he's doing this, he's trying to railroad us.
10 You know, he doesn't want the jury to hear anything that we have.

11 Then we had the arguments yesterday afternoon. I think
12 at some point you and I got into a little bit about what I think
13 the film shows and you think the film shows. And they heard your
14 comments on that.

15 I just want to say, Your Honor, that I think they were
16 all upset when they left the courtroom yesterday. I heard them
17 uttering. You may have heard it. I don't know. But I heard it.

18 And the marshals were pushing them pretty hard when
19 they got out of here because they were muttering under their
20 breath. Railroad, you know, kangaroo court, stuff like that.

21 So I would just make a plea to Your Honor if you could
22 give it a shot to let him come back and sit here. I, of course,
23 don't want him to come down and swing. I'll probably be the
24 first one he hits. But I just think it, it just makes a terrible
25 burden for me to sit here without him. Whatever you say can't be

1 good and I don't know how you say anything to them.

2 And you're right, I probably should not have said what
3 I just said to you in front of these other people, but they might
4 just, might just beat him up even more. I'm just making the plea
5 to you. And if you don't do it, I understand. I understand how
6 you would do it.

7 THE COURT: I was more worried, frankly, I wasn't
8 worried about the defendant. I was worried about the fact that
9 we have spectators. And since I'm not going to charge the jury
10 until tomorrow, I am just concerned about word getting out that
11 Harris isn't here because won't let him back in.

12 MR. MARTIN: That's fine, Your Honor.

13 THE COURT: Anything you want to say, Mr. Harding, on
14 this point?

15 MR. HARDING: No, Your Honor.

16 THE COURT: I hear what you're saying, Mr. Martin, and
17 I feel your pain. I really mean that. But I started this trial
18 with a zero tolerance position. I think I have bent over
19 backwards. I appreciate that the defendants don't feel that some
20 of my rulings have been fair and balanced or whatever.

21 MR. MARTIN: Actually, Your Honor, they don't think any
22 of them were.

23 THE COURT: Okay. But to go up there and lose control
24 and swing at a marshal and fight the marshals to the point where
25 he has to be Tased, tells me that it would be wholly

1 irresponsible of me to bring him back down here. And I'm not
2 going to do it.

3 He's comfortable upstairs. They've set up the video
4 and audio feed. Deputy Akers tells me that he's expressed some
5 concern about other prisoners hearing the case. I don't know
6 what that's about. We're at closing argument. Maybe he doesn't
7 fully appreciate all that's going to happen for the balance of
8 the trial. It's just people talking about him. But maybe that
9 is his concern.

10 I will tell the jury, subject to your editing whatever
11 I say, that Mr. Harris suffered some minor injuries -- I don't
12 want to lie to the jury -- suffered some minor injuries last
13 night and is not able to be with us today. That's it.

14 MR. MARTIN: That's perfectly acceptable to me, Your
15 Honor.

16 THE COURT: All right. That's what I will say. I will
17 say they are not to draw any adverse inference from Mr. Harris's
18 absence and proceed as they have throughout the trial. Okay?

19 MR. MARTIN: Thank you, Your Honor.

20 THE COURT: I'm not going bring him back.

21 MR. HARDING: Judge, can't you just instruct the jury
22 that they're not to speculate as to the reasons for his absence.
23 I don't think that it's fair to the government to create sympathy
24 for Mr. Harris. And I think that Your Honor's present
25 instruction may simply be a sympathy --

1 THE COURT: I don't think so. They know he's got
2 epilepsy.

3 MR. HARDING: That's the problem.

4 THE COURT: Well, I don't think that's going to
5 generate sympathy for him. I appreciate it.

6 MR. MARTIN: With all the evidence in this case, that's
7 not an issue. Thank you, Your Honor.

8 THE COURT: All right. Thank you.

9 (End of bench conference.)

10 THE COURT: Okay. I think we're ready for the jury,
11 Mr. Hanlon. I saw you look at your asides pretty quickly there.
12 Are you concerned at all about the felony murder business?

13 MR. HANLON: That's what I was playing with, Your
14 Honor. I tried to make it a little neutral.

15 THE COURT: Do you need --

16 MR. HANLON: I fixed it. What I did was I went into my
17 felony murder slide, I took out malice aforethought.

18 THE COURT: Okay. Well, we're obviously well behind
19 the schedule that we set. Mr. Hanlon, your best guess.
20 Obviously, you can use up to four hours. But how much do you
21 expect?

22 MR. HANLON: It will not exceed, Your Honor, I have to
23 actually get, it will not exceed the three hour time frame. My
24 goal is to really try to make it less than that. But I can't
25 guarantee that.

1 THE COURT: All right. So I think --

2 MR. HANLON: I have no problem taking a break.

3 THE COURT: Yeah. We're going to have to, obviously.

4 MR. HANLON: No problem with that.

5 THE COURT: It's approximately 10 after 11. I would
6 imagine we'll go until pretty close to 1:00 and then break for
7 lunch and then come back. And what I anticipate is that we may
8 not get to you today, Mr. Pyne. I assume you don't have a
9 problem with that?

10 MR. PYNE: No. I prefer to go first thing in the
11 morning as opposed to 4:00 this afternoon.

12 THE COURT: Would you, would you prefer to break yours
13 up to 20 or 25 minutes today and 30 minutes?

14 MR. PYNE: No. I probably prefer to do it all in one.

15 THE COURT: Prefer to do it all in one?

16 MR. PYNE: Yeah. First thing in the morning if that's
17 possible.

18 THE COURT: All right. Well, now, that raises a
19 question of whether I should instruct first. But I guess we
20 really aren't in a posture to do that. Okay. We'll see how it
21 goes. It may be that possibly Mr. Lawlor and Mr. Martin will
22 take less time than they've been given. If you can start before
23 four, you'll go today.

24 MR. PYNE: If we can see how it goes, Your Honor.

25 THE COURT: We'll see how it goes. But really, if I

1 can get you on by 3:45 or so, I'd like to have you on today.

2 MR. PYNE: That's fine.

3 THE COURT: All right.

4 (Jury enters the courtroom.)

5 THE COURT: Members of the jury, good morning. You're
6 tied of hearing me say it, but thank you so much for your
7 patience and your cooperation. We're ready to continue.

8 You, of course, will notice right away, I'm sure, that
9 Mr. Harris is not with us. The Court's decided to proceed in his
10 absence. He suffered a minor injury last night and is not able
11 to be with us today. But under the circumstances of the case, we
12 have decided to proceed. And Mr. Harris is still, of course,
13 ably represented by Mr. Martin and Mr. Flannery.

14 We're now ready for closing arguments. And Mr. Hanlon
15 will proceed first. At some point during Mr. Hanlon's closing
16 argument we're going to break for lunch. And then we'll resume
17 after lunch. And then you'll hear from Mr. Lawlor.

18 I think I mentioned that Ms. Rhodes was going to do the
19 closing for Mr. Mitchell. Instead, they've decided that Mr.
20 Lawlor will do the closing. And then you'll hear from Mr. Martin
21 later this afternoon on behalf of Mr. Harris. Whenever you're
22 ready, Mr. Hanlon.

23 MR. HANLON: Thank you, Your Honor. Good morning,
24 ladies and gentlemen. At this beginning of this trial, now two
25 months ago, Mr. Harding told us and told you that what you would

1 see during this trial would be a descent into an inferno, a
2 descent into the underworld. And that is exactly, ladies and
3 gentlemen, what you've been witness to during the course of this
4 case, what you've heard about, what you've seen, and what you've
5 reviewed testimony of.

6 The underworld of drug trafficking, robbery, an
7 organization of a group of friends, individuals working together
8 to deal drugs, to commit robberies when profitable, and
9 ultimately a group and a series of activities that carries us
10 into 2002 and the murders of five human beings -- this is the
11 descent into inferno that you were told to expect and it is what
12 this trial's brought to light.

13 What I'm going to try to do this morning and probably
14 for a little while after lunch, I will try to be as brief as
15 possible, is to go over the details of the evidence that we've
16 seen in this case. It's been a great deal of it and it's been
17 over a two month period that you ladies and gentlemen have seen
18 it. I've had to go back and review myself to make sure that I
19 have things straight. I'm sure all of my colleagues on the
20 prosecution and defense side have as well.

21 The goal is to help and see how the evidence fits in in
22 its whole and also as to individual counts. That's what I'll
23 attempt to do this morning. And I'll begin by discussing the
24 individual counts of the indictment. What are the actual charges
25 that our defendants, Mr. Mitchell, Mr. Harris, Mr. Martin, and

1 Mr. Gardner are facing in this case? And then I'll discuss how
2 the evidence fits in completely.

3 Generally speaking, the evidence that we've seen in
4 this case has shown that from 1994 and on, the defendants and
5 others worked together in various capacities, but always as a
6 unit, always as a group, to deal drugs, to commit robberies, as a
7 means of resupplying themselves and getting a ready, cheaper
8 supply of drugs, as a means of eliminating rivals. They have
9 protected each other when it was necessary to do so, helped each
10 other shake down customers for money, helped each other resolve
11 beefs on the streets and protected one another.

12 During 1990's and thereafter, and in particular when we
13 see that happening in the 2002 time frame, of course ultimately
14 the conspiracy, the drug trafficking conspiracy and the
15 racketeering enterprise that's been at issue in this case
16 culminates in the 2002 murders and then continues to carry on
17 past that date with obstruction of justice, courtroom antics, and
18 everything else that you've heard during the course of this
19 trial.

20 In discussing individual counts, and there are many of
21 them, the indictment roughly deals with the drug trafficking and
22 the violence and the murders in two rough categories. That's
23 probably the best way to look at it.

24 The first category begins with Count One, and that is
25 our racketeering conspiracy charge. You've heard references,

1 ladies and gentlemen, to an enterprise at various points of time.
2 It's occasionally been the subject of examination of attorneys.
3 Was this an enterprise? Was this a conspiracy? A lot of that
4 language comes from Count One. And then following off of Count
5 One, Counts Two through Seven are a series of murders done in aid
6 of that racketeering, that were part of that racketeering
7 activity, the five murders that you've heard about in this case.

8 After the racketeering counts, the indictment also
9 charges in Count Eight conspiracy to distribute narcotics. So if
10 the first set of counts has to do with the racketeering
11 enterprise, the second set of counts has to do with a drug
12 conspiracy.

13 Enterprise in the racketeering context and conspiracy
14 are related concepts. They both involve associations of people.
15 And in this case, the evidence of one is also going to prove the
16 evidence of another. But they are distinct, legal ideas.

17 In this case you may find that there was a conspiracy
18 and not an enterprise. On the other hand, you might find there
19 was an enterprise but not a conspiracy. You're not required in
20 this indictment to find both, although I submit you will find
21 that there was both a racketeering enterprise and a conspiracy in
22 this case, even though you only have to find one or the other.
23 They do not depend on one another.

24 As I mentioned, they are related to one another in this
25 case in the sense that the evidence is really going to be the

1 same proving those two things. And the image that emerges from
2 the evidence in this case of our defendants and other people is
3 that they functioned as a group, helping each other when
4 necessary and reliably in drug trafficking and in robbery.
5 Helping each other in various ways I'm going to talk about.

6 And there have been particular terms that we've
7 occasionally heard from the witness stand to describe this.
8 William Montgomery talked about it as a family. That's the word
9 he used. Ernest Reynolds, who was involved in drug trafficking
10 early on with Mr. Martin, Mr. Gardner in the '93/'94 time frame
11 talked about being part of a unit. And in some of Mr. Harris's
12 rap lyrics, we hear references to an alliance, a thug alliance.

13 Any one of these terms is an accurate description of
14 how this group operated. May be informal, it may be
15 unsophisticated, but it was a group and it was a unit, one that
16 constitutes both an enterprise for racketeering purposes and a
17 conspiracy under the law.

18 So let's begin by looking a little bit at Count One.
19 We get into legalese a little bit. I'll try not to be too dry.
20 And I apologize if I do become a bit dry as we go through this.

21 Count One charges racketeering conspiracy, a conspiracy
22 to engage in the affairs of an enterprise through a pattern of
23 racketeering activity. All four defendants are charged in Count
24 One.

25 What are the elements of Count One? The elements,

1 ladies and gentlemen, are the things that the evidence must prove
2 beyond a reasonable doubt. This is the only thing, these are the
3 only things that the evidence must prove beyond a reasonable
4 doubt. And although the indictment lays out the basic theory in
5 rough form about how the racketeering conspiracy operated in this
6 case, ladies and gentlemen, you do not have to find that each and
7 every word of the indictment has been proven if you find that the
8 evidence in this case has established beyond a reasonable doubt
9 these five elements.

10 They are, number one, that an enterprise existed; that
11 the enterprise, number two, affected interstate commerce; third,
12 that the defendant, as to each defendant you will be asked to
13 make this assessment individually as to each one, as to each
14 defendant whether that defendant was associated or employed with
15 the enterprise -- employed by the enterprise; and fourth, whether
16 or not each individual defendant, again, you make an assessment
17 as to each one, whether each defendant became a member of the
18 conspiracy to engage in the affairs of this enterprise through
19 racketeering activity.

20 What's an enterprise? I've been talking about it all
21 morning. You've been hearing the term for two months. What is
22 an enterprise in this case?

23 We've heard the term before. It gives mind to rise of
24 a corporation or a company or some kind of business. But under
25 the law, the concept of enterprise is much, much broader. It is

1 essentially a group of individuals coming together for a common
2 purpose where they have some kind of organization. It could be
3 as formal or informal as it needs to be. There is no requirement
4 of a particular tight structure or chain of command. Any
5 organization can satisfy the requirement of an enterprise. And
6 you must also find, ladies and gentlemen, that there was some
7 continuing unit that was part of this racketeering enterprise.

8 You need not find that every single defendant or that
9 every single person who was ever employed by the enterprise was
10 employed for the entire time that the enterprise was in
11 operation. As we've discussed in this case, the evidence shows
12 that Mr. Harris did not become a member of the enterprise until
13 somewhat later.

14 But there is, and you will find, that there was a
15 continuing unit that was always there. Mr. Martin, Mr. Gardner,
16 always there. Mr. Mitchell, always there, even leaving aside the
17 brief period of time that he was in college during the 1990's.
18 These individuals, as well as William Montgomery, as well as
19 Darryl Bacon, form a core group which is always part of this
20 enterprise. Those are the elements of this first part of a
21 racketeering conspiracy.

22 The membership can change over time. It does not have
23 to be rigid. The membership may not necessarily be the same in
24 1994 as it is in 2000, as it is in 2002. Again, Mr. Harris joins
25 later. Does not have to be involved with any kind of separate

1 legal entity or corporation. There doesn't have to be a
2 Mitchell/Harris/Martin/Gardner Incorporated in the back of this.
3 And although Shakedown Entertainment is alleged to be part of the
4 racketeering enterprise at some point, it is not the equivalent
5 of the racketeering enterprise. The law doesn't require it to be
6 and it's not alleged to be in this case. Shakedown simply is a
7 part of the group, just like the defendants are, and just like
8 their associations.

9 Very importantly, ladies and gentlemen, the law does
10 not require that the enterprise have a particular name or title
11 or chain of command or color. There's been plenty of testimony
12 in this case and plenty of argument about, well, did you have a
13 flag? Did you have a name? And what was your territory? And
14 who was your president and who was your CEO and who was the boss?
15 There have been references occasionally to the Corleone family
16 from The Godfather and chains of command and all this other kind
17 of stuff. None of that is required under the law. None of it
18 is. It can be as informal as it need be.

19 There's been plenty of testimony and plenty of argument
20 here about the phrase "Randallstown/Park Heights organization."
21 That's come up again and again and again. The indictment does
22 not allege that that was the name of the group given by the
23 defendants. That's simply a label put on for investigative
24 purposes. And you do not need to find that there was any name to
25 the defendants' organization and the organization they were

1 members of with their other associates.

2 In this case, we see the informal organization carrying
3 itself out and actually existing in, number one, the pattern of
4 engaging in particular operations. These defendants were there
5 for each other when they needed to be. When there was a problem,
6 they reacted to it, whether it was dealing with a customer,
7 identifying a new supplier, going to New York to pick up drugs at
8 the same time and providing common protection, or carrying out
9 the various crimes, beginning with the McCaffity murder in 2002.
10 Individual operations show us the structure of this group. And
11 it is a tight structure, a family, an alliance.

12 Although leadership is not a requirement of a RICO
13 enterprise, in this case we have leaders emerging in the
14 individual operations. A leader for the day, if you will. We
15 see that with McCaffity, we see it with Wyche, we see it with the
16 Spence murder as well.

17 Again, there is structure. The most fundamental
18 element of the structure is that the defendants and their other
19 coconspirators were there for each other to provide assistance
20 when they needed it. That's the heart of a RICO enterprise.
21 It's also the heart of a conspiracy.

22 Another element of a RICO conspiracy, ladies and
23 gentlemen, is that there be some effect on interstate commerce,
24 that the enterprise operator have an effect on interstate
25 commerce in some way.

1 This is an easy one. Drugs come into the United States
2 from outside the United States. They're shipped into Maryland
3 from outside Maryland. We've heard testimony here about trips to
4 York, trips to Pennsylvania. We've heard testimony about the
5 trading of guns and loaning of guns which are not manufactured in
6 the state. Clearly, this is a group that affected interstate
7 commerce in a way that satisfies the law.

8 As to each individual element, each individual
9 defendant, ladies and gentlemen, you must find the defendant was
10 associated with the enterprise and that he agreed to become a
11 member of the particular conspiracy to engage in that, the
12 affairs of that enterprise through a pattern of racketeering
13 activity. So let's talk about association first.

14 The association as to each defendant is an individual
15 thing. And you ask yourselves, ladies and gentlemen, was the
16 defendant connected to the group in some way? Did he know of the
17 group's existence? He may not have known of everything that the
18 group did, just as a person who works for a corporation may not
19 know what's going on on the Sixth Floor or the Fifth Floor. But
20 they're aware of the corporation and they work for it. The same
21 is true here.

22 If the defendants had a general understanding of the
23 existence of this group, then that is a part of what constitutes
24 an association. And importantly, it not required under the law
25 that all of the defendants have been associated with the group

1 during its entire existence. We're talking about a period from
2 1994 to 2006 for the racketeering count.

3 You need only find, ladies and gentlemen, as to each
4 individual defendant that he became a member of the enterprise
5 for some period of time charged in the indictment. They do not
6 have to be involved for the whole duration. Again, as to Mr.
7 Harris, he wasn't. He doesn't meet Mr. Mitchell until much
8 later, in the 2000/2001 time frame at the Hickey School.

9 Membership, specific membership. That is an agreement
10 to engage in the racketeering conspiracy, is the last element.
11 And the specific agreement here, ladies and gentlemen, it gets a
12 little tricky because, again, we're bringing in another legal
13 element. It's an agreement to participate in the affairs of an
14 enterprise through a pattern of racketeering activity. Pattern
15 of racketeering activity is another legal term.

16 It is not required that the defendants all have agreed
17 to participate in each and every criminal act that the conspiracy
18 or the enterprise engaged in. That's not required at all. That
19 would be rather absurd. Again, like a person becoming a member
20 of a corporation and somehow individually committing him or
21 herself to everything that goes on. That's not how the real
22 world operates.

23 The requirement here is that the defendant agree to
24 participate in the engagement of a pattern of racketeering
25 activity. You may not know everything that's going on but you

1 know generally what's going on. That's the scope of the
2 agreement in this case.

3 Now, it does raise the issue, what is a pattern of
4 racketeering activity? It sounds like something vaguely
5 criminal, but what does it actually mean?

6 A pattern of racketeering activity means that the
7 defendants have agreed to engage in this pattern, even without
8 necessarily agreeing to engage in each individual thing. A
9 pattern of racketeering activity is defined as the committing of
10 two or more acts of racketeering by the enterprise as a whole
11 during the course of the life of the enterprise. That's what's
12 required to show a pattern of racketeering activity. And it gets
13 a little complicated here, ladies and gentlemen. But the
14 important part here is that although the evidence must prove two
15 or more acts of racketeering by the whole enterprise, the
16 evidence does not have to prove that each individual defendant
17 committed two acts of racketeering. That's not required under
18 the law.

19 Again, what's required is that the enterprise engaged
20 in this pattern and that the defendants each individually agreed
21 to participate in the pattern, not necessarily the individual
22 acts. It's a little complicated, but there's a distinction
23 there.

24 At the end of the day in this case what you will be
25 asked to decide is did this enterprise engage in two or more acts

1 of racketeering activity? Eight are charged in the indictment,
2 the murders and the armed robberies that have been alleged and
3 which have been proven by the evidence.

4 You don't have to find that the individual defendants
5 here participated personally in all those acts, only that the
6 acts occurred as part of the enterprise and that each individual
7 defendant agreed to be involved in the pattern, not necessarily
8 the individual actions. In fact, the evidence is going to show
9 with an abundance and beyond any reasonable doubt, in fact all of
10 the defendants were involved in all or most of the acts in this
11 case, so it won't be a difficult problem here.

12 The individual racketeering acts -- and we begin to
13 move a little closer to the evidence now -- are nine total.
14 Eight of them are listed on your screen. They correspond
15 essentially to the murders of Oliver McCaffity, Lisa Brown,
16 Darryl Wyche, Anthony Wyche, Tonya Jones Spence, and also the
17 planned robberies that you've heard about. In some instances,
18 the racketeering acts are the murder itself. In other instances,
19 they're murder and conspiracy to commit murder, a conspiracy
20 simply being an agreement to carry out the act, which is a
21 separate crime from murder itself.

22 Armed robbery is also alleged as part of this, the
23 armed robbery, to carry out a robbery of Ms. Spence and also the
24 armed robbery of the Wyche brothers. And I could see I'm drawing
25 on a bit, ladies and gentlemen, because half of our audience is

1 leaving. I'm going to take that as a sign to try to speed up a
2 little bit.

3 The ninth racketeering act is the conspiracy to engage
4 in drug trafficking in this case, a conspiracy to possess and to
5 distribute narcotics, which also corresponds --

6 THE COURT: I'm sorry, Mr. Hanlon. Perhaps we should
7 wait. We were joined by some high school students this morning,
8 ladies and gentlemen, from a local school. It's often beneficial
9 for them to visit court and to observe the proceedings.

10 Thank you, Mr. Hanlon. Sorry for the interruption.

11 MR. HANLON: Certainly, Your Honor. Again, ladies and
12 gentlemen, I do take that as a soft sign here. I am doing my
13 best to move through the indictment. And I promise you, we're
14 still on Count One. Not all 19 counts are this complicated, so
15 we are going to move through it a bit more quickly.

16 Racketeering act nine, which is part of Count One, is
17 also charged as Count Eight of the indictment. The conspiracy to
18 distribute narcotics not only stands on its own as one of the
19 theories combining the activities of the defendants and their
20 partners, but in fact it's also part and parcel of the
21 racketeering count. It's only one of the various racketeering
22 acts that you can consider in assessing whether the pattern's
23 been shown.

24 And importantly, and as I mentioned before, ladies and
25 gentlemen, you only have to find that two of these nine

1 racketeering acts have been proven to be convinced beyond a
2 reasonable doubt that the enterprise engaged in racketeering
3 activity. Once you've been convinced of these racketeering acts,
4 any two of them, the only related issue is whether or not the
5 individuals defendants charged in this case conspired to
6 participate in this pattern.

7 With respect to the specific acts of racketeering, we
8 get into a little bit of state law here. When we talk about
9 murder and conspiracy and armed robbery being charged as
10 racketeering acts, what does that mean? These are common sense
11 terms that we all have a walking around understanding of, but
12 they're also legal terms.

13 Murder, as it's mentioned in these racketeering acts,
14 includes under state law, Maryland state law, first degree murder
15 and second degree murder, one or the other. You only have to
16 find one or the other, ladies and gentlemen, to be convinced of
17 that particular racketeering act. You have an option.

18 First degree murder is simply that a murder is carried
19 out, that is the killing of a human being with an intent to kill,
20 that it was deliberate and premeditated. I'm going to get into
21 this a little bit more about what all that means. But it really
22 kind of boils down to someone was killed and the person that
23 killed them intended to do so and thought about it a little bit
24 beforehand.

25 As to the McCaffity and Brown murders, the Wyche

1 murders, and also the murder of Ms. Spence, as charged as a
2 racketeering act of first degree murder and also a racketeering
3 act of second degree murder. This one is simply the intentional
4 killing of a human being. That is the defendant or someone else
5 involved in the enterprise killed the victim and intended to kill
6 them. There's no requirement of premeditation. Both second
7 degree and first degree murders are charged as to all of the
8 murders in the racketeering counts in this case. You need only
9 find one.

10 Some of the murder counts also charge separately the
11 conspiracy to commit the murder. That is also part of the
12 racketeering act. The conspiracy is simply the agreement to
13 carry out the crime. As you've heard, the murder of Mr.
14 McCaffity, Ms. Brown, the Wyche brothers, and Ms. Spence were all
15 carefully planned and orchestrated crimes. Before those murders
16 ever took place, there was an agreement involving these
17 defendants and other people in this case to commit those crimes.
18 That conspiracy is an act of racketeering by itself.

19 Finally, ladies and gentlemen, the racketeering acts
20 charged as to the armed robbery, attempted armed robbery of the
21 Wyche brothers and also Ms. Spence. Robbery is essentially what
22 you probably came into court before this trial began
23 understanding robbery to mean. That is the taking of property
24 from another person through force or the threat of force, with
25 the intent to deprive the victim of the property. In this case,

1 they were armed robberies, done with a weapon. That was clearly
2 the motivation of both the Wyche murder and the Spence murder.

3 Importantly here, it is these elements of Count One
4 which you must consider in determining whether or not guilt has
5 been proven beyond a reasonable doubt. You need not find
6 anything other than the elements of a racketeering conspiracy for
7 the defendants to be guilty. And the evidence does prove, as
8 I'll mention in a little while, by beyond any doubt, much less a
9 reasonable doubt, that this racketeering enterprise existed and
10 that the defendants were part of it and conspired to engage in
11 this racketeering activity.

12 There's been a lot of talk in this case about other
13 stuff, the Randallstown/Park Heights organization as a name, and
14 Shakedown Entertainment, and who was the leader and what was the
15 color and what neighborhood they lived in.

16 You don't have to worry about that at all, ladies and
17 gentlemen. You can be uncertain as to the location. There may
18 not be evidence of a name. And you may decide that Shakedown
19 Entertainment really isn't all that important in this case. The
20 racketeering conspiracy is proven if the elements are proven
21 beyond a reasonable doubt. All the other stuff, while it's
22 evidence, is not required for Count One to be satisfied in total
23 or as to the individual defendants in this case.

24 Now, let's move to Count Eight, which is the other
25 legal theory.

1 Count Eight charges a conspiracy to distribute
2 narcotics. As I mentioned, this is not only part of the
3 racketeering conspiracy, but it's also a separate count by
4 itself, Count Eight, and has some substantive counts charged
5 along with it.

6 A conspiracy is an agreement between two or more people
7 to carry out a crime; in this case, the distribution and the
8 possession with the intent to distribute narcotics. That's what
9 a conspiracy is. The elements of conspiracy are that the
10 conspiracy existed and that, as to each of the defendants, you
11 consider each one individually, whether or not they joined, that
12 is knowingly became a member of the conspiracy. A lot of the
13 evidence is going to coincide with the evidence of the
14 racketeering count, although the legal standards are a bit
15 different.

16 If anything, ladies and gentlemen, conspiracy is a
17 broader concept in a lot of respects than RICO enterprise.
18 Enterprise, as I mentioned, doesn't require any formal structure,
19 doesn't require any formal organization. A conspiracy can be any
20 time two or more people come together to form an agreement.
21 Forget about organization. Forget about continuing unit. Forget
22 about structure. Conspiracy doesn't require anything like that.
23 It's two or more people with a mutual understanding to commit a
24 crime.

25 And that certainly is shown in this case from the

1 defendants' conduct together during the 1990s, sharing suppliers,
2 trading weapons, being arrested with narcotics, working together,
3 planning armed robberies, and then carrying out the 2002 murders,
4 certainly shows this mutual agreement and support.

5 And one of the realities of conspiracy law is that the
6 conspiracy is often unspoken. It is often unwritten.
7 Coconspirators don't typically get together, write out the terms
8 of the conspiracy, and listing the members. That's how business
9 operates, that's not how criminal conspiracy operates.

10 So conspiracies are typically defined by the conduct
11 and the acts of the members. And that's what we have here.
12 Conduct proves the existence of the conspiracy in this case.

13 Agreements in operation, criminal conspiracy in
14 particular, are shown by evidence that defendants help one
15 another, that they assist one another, them and other
16 co-conspirators, to achieve any kind of a common goal. However
17 light, however informal it might be, it is that mutual
18 assistance, it is that conduct that demonstrates and proves the
19 existence of a conspiracy.

20 One of the issues that comes up in this case that you
21 may hear about is the notion of withdrawal. There has been
22 testimony and evidence in this case about whether a defendant was
23 in jail and whether or not a defendant was in college. We heard
24 about a great deal about the last couple of days from, with
25 respect to Mr. Mitchell.

1 Very important to understand in this context, ladies
2 and gentlemen, what does withdrawal from a conspiracy really
3 mean? Under the law, a conspiracy, once it exists, once
4 defendants have formed that agreement, a conspiracy will continue
5 to exist, frankly, forever theoretically until defendants
6 withdraw from the conspiracy.

7 And withdrawal doesn't just mean that he's not around
8 much. Withdrawal doesn't mean that you're out of town for a
9 year. Withdrawal means more than that.

10 A withdrawal requires real affirmative conduct by a
11 member of a conspiracy to defeat or disavow the purposes of this
12 conspiracy. It's not enough to just kind of disappear and then
13 come back or disappear and not even involve yourself in the
14 affairs of the conspiracy at all. You actually have to defeat or
15 disavow the activities of the conspiracy.

16 There's evidence in this case that sometimes people
17 were in jail, sometimes people were in college. But there's been
18 no evidence, and there is, in fact, no evidence, that anybody,
19 once a member of this conspiracy, did anything to withdraw.

20 So in effect, from the beginning of the conspiracy and
21 going on, the conspiracy continues to exist unless evidence is
22 shown of withdrawal. Even an arrest, even imprisonment, does not
23 necessarily bring a conspiracy to an end. In fact, we've seen a
24 conspiracy in this case continuing long after defendants and
25 accomplices were arrested.

1 In real life, conspiracies thrive on silence, and
2 actions have to speak louder than words. That's how conspiracies
3 are proven. You're never going to get a contract of conspiracy.
4 You're never going to get a guide book and rules and regulations
5 for the Park Heights/Randallstown drug trafficking organization.
6 They don't exist. It is the conduct that defines a conspiracy.

7 In showing that an individual defendant is a member,
8 this simply involves evidence of whether or not they joined the
9 conspiracy or have any understanding of its goals. Do they have
10 a stake or interest in the outcome? Are they helping other
11 members of the conspiracy? Do they have knowledge of it? Are
12 they recruiting other people into the conspiracy?

13 Coconspirators within a broad conspiracy do not have to
14 know everyone else who's in a conspiracy. The law does not
15 require that. There may be conspirators they never work with.
16 There may be conspirators they do not know. Each individual
17 defendant, each individual member of the conspiracy need not know
18 everything that is going on in the conspiracy. A person's
19 participation in a conspiracy can be minimal and they are still a
20 member of the conspiracy under the law.

21 Conspiracy activity in this case, ladies and gentlemen,
22 includes dealing drugs. It includes buying drugs during trips to
23 New York. It includes transporting drugs from New York and other
24 places. It includes robbing people in order to obtain drugs and
25 for money to buy drugs. And it includes using violence as part

1 of that drug trafficking business. We've heard that over and
2 over again in this case. And the relationship between this drug
3 trafficking and violence is an important one because violence and
4 murders are charged in this case as substantive counts done in
5 furtherance of this drug trafficking conspiracy.

6 What does violence have to do with drugs in this case?
7 The drugs trafficking conspiracy needed drugs and needed money to
8 maintain itself. They picked out targets like the Wyche brothers
9 and Tonya Jones Spence's husband, Darius Spence, because they
10 were an easy source for money and an easy source for narcotics if
11 they were found on any.

12 Drug traffickers rob people, other drug traffickers, in
13 order to maintain their business. We heard about that from
14 Special Agent Ellington and we heard about that from the various
15 cooperating witnesses or accomplice witnesses who testified that
16 you often carry a gun if you're a drug dealer precisely because
17 of the concern for robbery. There is an intimate connection in
18 this case between violence and drug trafficking, which is an
19 important part of the indictment.

20 The substantive counts essentially relate to each.
21 Individual murders, ladies and gentlemen, as I turn to them, and
22 I assure you it starts to move a little faster now, there are two
23 legal concepts that you should be aware of. Number one, there's
24 a concept called coconspirator liability. And there's a concept
25 called aiding and abetting. As we consider the various murder

1 counts in this case, it's important to know that the law does not
2 require that for a person to be guilty of a murder or any other
3 crime that they actually carried out themselves or by themselves.
4 In fact, the person can be guilty of a crime that they did not
5 commit personally under two circumstances.

6 Number one is conspirator liability. If you're a
7 member of a conspiracy or if the defendant is found to be a
8 member of a conspiracy, and if a murder or a robbery is carried
9 out in furtherance of that conspiracy and such a crime is
10 reasonably foreseeable to the defendants, and that's certainly
11 the case here -- all of the murders were part of the conspiracies
12 charged in this case and advanced the goals of the conspiracy --
13 then the individual defendants who are members of the conspiracy
14 are guilty even if they didn't do it themselves. The evidence is
15 going to prove the defendants were all personally involved where
16 they're charged, but the law doesn't require that.

17 If they're members of the conspiracy and the crime's
18 committed, they're responsible under conspiracy liability. It's
19 essentially a rule that recognizes that once you join the club,
20 you're responsible for what the club does. It's a common sense
21 proposition that the law recognizes.

22 Another concept is aiding and abetting, which is
23 charged in the indictment. This is another way that the
24 individual defendants could be guilty of these substantive
25 murders even if they didn't do it themselves.

1 Aiding and abetting simply means you may not be, the
2 defendant may not be the murderer, but he's helping the murderer.
3 Helping the murderer by providing guns. Helping the murderer by
4 doing surveillance. Helping the murderer by setting up the
5 crime. Helping the murderer by being there when the murder takes
6 place. And helping the actual murderer to escape.

7 An example of this is probably the Spence murder. It's
8 been a lot of discussion about whether or not Mr. Gardner was the
9 shooter in that crime. Well, ladies and gentlemen, all the
10 evidence in this case is that Aaron Holly, the red hat guy, was
11 the shooter who executed Tonya Jones Spence that day. Mr.
12 Gardner's guilty, however, under both coconspirator liability and
13 by aiding and abetting the crime. He helps plan it. He helps do
14 surveillance. He's there to back up Mr. Holly. He's there to
15 help Mr. Holly escape and ditch the evidence in the woods. And
16 he provided the guns. That's aiding and abetting and that's
17 guilt under the law.

18 Let's turn to the murder in aid of racketeering counts.

19 Counts Two through Seven charge the defendants
20 variously with specific murders done in aid of racketeering. The
21 elements of these, which I think I can move through a bit
22 quickly, are, number one, that an enterprise affecting interstate
23 commerce existed.

24 Secondly, that the enterprise engaged in racketeering
25 activity. We've already talked about those concepts in the

1 context of Count One.

2 Third, that the defendant, each individual defendant
3 had a position or was seeking a position in the enterprise.
4 That's part of the counts.

5 Fourth, that the defendant committed the charged act of
6 violence. In these cases, it's murder and conspiracy.

7 And fifth and finally, that the general purpose of the
8 murder was for the defendant to maintain that position within the
9 racketeering enterprise. Let's talk about each of them in turn.

10 First of all, what is this notion of a position in the
11 enterprise and maintaining that? Essentially, what this boils
12 down to is if you find, ladies and gentlemen, that the defendants
13 in this case committed these murders or aided and abetted their
14 commission because they believed they held a position in this
15 enterprise, a position in this group, and it was expected of them
16 in a group committed to drug trafficking, racketeering, murder
17 and robbery to participate in those kinds of acts, then that
18 establishes that the purpose of these racketeering murders was
19 for the defendants who participated to maintain their position.
20 That's all it is. Really, it's essentially whether or not the
21 murder in some way advanced the goals of the organization.
22 That's really what it boils down to.

23 The crimes of violence charged in an individual count
24 are basically as follows: Mr. Mitchell and Mr. Harris, Willie
25 Mitchell and Shelton Harris, are charged in Counts Two, Three,

1 and Four with murders and conspiracy relating to the murder of
2 Oliver McCaffity, the conspiracy to murder Oliver McCaffity, and
3 the murder of Lisa Brown. We've already heard evidence about
4 that. I'm going to talk about it in a bit more detail. These
5 three counts are the substantive murders in aid of racketeering.

6 The victims are charged, are mentioned in separate
7 counts and the conspiracy is mentioned separately.

8 The elements of those various things, murder,
9 conspiracy, and murder are also mentioned there. For each of the
10 murder counts you have three alternative theories, three types of
11 murder which are charged inside the count -- first and second
12 degree murder, which I already talked about, and then something
13 called felony murder, which is something we haven't talked about
14 yet.

15 First degree murder we talked about, ladies and
16 gentlemen. And second degree murder we talked about. I don't
17 want to spend too much time or draw on about this already. But
18 the elements are essentially the same as with the racketeering
19 acts we talked about.

20 Felony murder is new. To prove a felony murder, the
21 requirements under Maryland law are that there be proof that the
22 defendant participated in a felony. In this case, the various
23 felonies that sort of resonate throughout these counts are
24 planned robberies, planned murders, and planned conspiracies.
25 Number two, that the defendant or another participant killed the

1 victim or caused him to be killed. And finally, three, that the
2 killing occurred during the commission of the felony.

3 Basically, once you decide to commit one felony,
4 whether it's a robbery or whatever it may be, and during the
5 course of that felony someone gets killed, that's felony murder.
6 That's what it boils down to.

7 The next two counts, Counts Five and Six, relate to the
8 Wyche brothers. And all four defendants, Mr. Mitchell, Mr.
9 Harris, Mr. Martin, Mr. Gardner, are all charged here. Count
10 Five charges the murder of Darryl Wyche. Again, all three types
11 of murder are alleged. And Count Six charges the murder of
12 Anthony Wyche, all three types.

13 You don't need to find that all three types of murder
14 occurred, ladies and gentlemen. You only have to find one type
15 in your deliberations. If you're convinced beyond a reasonable
16 doubt as to first or second or felony murder and you're in
17 agreement on that count, then that satisfies the element. You
18 only have to find one. All three are charged but you have the
19 option of reaching a unanimous decision on any of the three.

20 Mr. Gardner is charged by himself in Count Seven of the
21 indictment. This is the racketeering murder of Tonya Jones
22 Spence on June 7th, 2002. Again, all three types of murder are
23 alleged. The felony in this case, of course, would be that Ms.
24 Jones Spence was murdered during the course of a planned robbery
25 of her husband, Darius Spence, in their apartment.

1 The remaining substantive counts, at least dealing with
2 the violence in this case, are Counts 9 through 16. These follow
3 off from Count Eight, the conspiracy count, for distribution of
4 narcotics, and also incorporate Count One, the racketeering
5 count. The statute is a statute that makes it a crime to possess
6 a firearm in furtherance of a crime of violence or a drug
7 trafficking crime under federal law. The crime of violence is
8 essentially the racketeering murders that we've already talked
9 about and the drug trafficking crime is the conspiracy to
10 distribute.

11 So for each one of these counts, ladies and gentlemen,
12 and again, they correspond with the murders we've seen. In each
13 instance, the related defendants are charged with possessing a
14 firearm in furtherance of two things -- in furtherance of the
15 racketeering murder that we already talked about, and in
16 furtherance of the drug trafficking conspiracy charged in Count
17 Eight. So there's two predicate felonies.

18 You only have to find one of these predicate felonies
19 for every one of these counts. Even if you're unconvinced as to
20 the racketeering stuff, if you find there was a drug trafficking
21 conspiracy and that the weapons were possessed in furtherance of
22 that, you can find the defendants guilty of these other counts.

23 Likewise, if you're not sure about the conspiracy to
24 distribute narcotics but you're convinced as to the racketeering
25 count, you can still find the defendants guilty of these firearms

1 counts. You only have to find one and reach a unanimous decision
2 as to that one predicate crime.

3 In addition to the possession of a firearm offense, for
4 all of the charges involving murder there's also another statute,
5 which makes it a crime if a defendant is committing a 924(c)
6 offense, that is a possession of a firearm in furtherance charge,
7 and all that stuff I just got done talking about, and during the
8 course of the commission of that offense the defendant causes or
9 aids and abets the death of a person through the use of that
10 firearm, and if the defendant acted with malice aforethought and
11 with premeditation, then we have the crime of premeditated murder
12 under federal law. It's a different statute.

13 Essentially, if you commit murder during one of those
14 firearms possession charges, then this is another violation of
15 the law. And it can be premeditated murder, laid out here, which
16 is sort of like first degree murder, or it can be felony murder,
17 which we already got done talking about, committing a murder
18 during the course of a felony.

19 For the murder counts following out of Count Eight,
20 there is both a felony murder and a premeditated murder
21 predicate.

22 The firearms counts dealing with Mr. McCaffity and Ms.
23 Brown are Counts 9, 10 and 11. Count 9 charges the possession of
24 a firearm in furtherance of the McCaffity racketeering murder and
25 Count 8, the drug conspiracy.

1 Count 10 charges the possession of a firearm in
2 furtherance of the Brown murder, the murder of Ms. Brown, and
3 also drug conspiracy, Count 8. So each of those counts you have
4 a gun charged and being in furtherance of two of these predicate
5 felonies. And Mr. Mitchell and Mr. Harris are charged here.

6 Count 11 charges the murder of Lisa Brown during the
7 course of Count 10. In other words, Count 11 says that while the
8 defendants were committing the violation of the firearms
9 possession statute in Count 10, they killed Lisa Brown. So it's
10 charged as a separate murder in Count 11.

11 Counts 12, 13 and 14 are sort of a similar structure
12 with respect to the Wyche murder. Count 12 is the possession of
13 a firearm against all of the defendants, all four during the
14 in-furtherance of the Wyche racketeering murders and the drug
15 conspiracy count.

16 Count 13 charges the murder of Darryl Wyche during the
17 course of Count 12, which is the firearms possession count.

18 Count 14 charges the murder of Anthony Wyche during the
19 course of Count 12, which is the firearms possession counsel.

20 You see how all the counts sometimes incorporate each
21 other and build off of each other. It gets confusing, ladies and
22 gentlemen, which is why it takes some time.

23 Finally, ladies and gentlemen, the Spence counts on
24 June 7th of 2002. Mr. Gardner is charged by himself here. Count
25 15 charges the possession of a firearm in furtherance of the

1 racketeering murder of Tonya Jones Spence, and drug conspiracy.
2 And specifically, the guns there, ladies and gentlemen, we've
3 identified. The .40 caliber and .357 revolver found in the
4 woods. And then Count 16 charges the murder of Tonya Jones
5 Spence during the course of Count 15.

6 Let's actually turn to the evidence and actually start
7 to talk about what the evidence has proven and get out of the law
8 a little bit.

9 What has the evidence proven in this case? We start
10 really with evidence relating to the drug trafficking conspiracy
11 and the racketeering conspiracy.

12 In establishing that the defendants were working
13 together from the early 1990's and on, one of the first things
14 you heard about, ladies and gentlemen, were the series of
15 specific arrests where the defendants were arrested, sometimes in
16 pairs, and sometimes by themselves, with narcotics. We went
17 through a series of arrests, which I'll go through quickly here.

18 October 18th of 1996, Mr. Martin and Mr. Gardner were
19 arrested together in Baltimore City by a detective. You remember
20 this, this evidence is one of the first things we heard about.
21 Detective Phipps testified he was doing surveillance. He sees
22 Mr. Gardner take something out of a red car, then go down the
23 block. Mr. Martin was about a block away. And they did
24 hand-to-hand transactions with some customers. If memory serves,
25 Mr. Gardner would hand the drugs, Mr. Martin was taking the

1 money, or vice versa.

2 He arrests them both, finds the marijuana in the red
3 car. Mr. Martin and Mr. Gardner identified this day dealing
4 drugs. They both, as it happens, give fake names. Mr. Gardner
5 identifies himself as Gary Bair, if memory serves, and Mr. Martin
6 identified himself as Donte Mitchell. But this is the first time
7 we see evidence of the defendants, at least in this courtroom, is
8 this 1996 arrest.

9 January 9th of 1997, a few months later, Mr. Martin's
10 arrested with about 78 grams of cocaine in individual vials,
11 about 39 vials. He's also got a bunch of money on him.

12 MR. PYNE: Your Honor, if I could object. That's just
13 an incorrect amount indicated on that slide.

14 THE COURT: All right. The jury's recollection of the
15 evidence and the exhibits will be reflective. Go ahead, Mr.
16 Hanlon.

17 MR. HANLON: Ladies and gentlemen, your memory serves.
18 If I've got it wrong, I apologize.

19 September 15th of 1997, Mr. Gardner is arrested with a
20 small quantity of heroin in three individual gel caps. October
21 15th of 1998, Mr. Gardner and Mr. Bacon are arrested. Darryl
22 Bacon is not one of the charged defendants, ladies and gentlemen,
23 but he is a member of this conspiracy and he's a member of this
24 enterprise. This is one of the times that he actually comes up
25 being involved in enterprise and conspiracy activity, together

1 with Mr. Gardner. And you heard testimony about this.

2 A firearm is found in the car, \$1700 cash, and a few
3 grams of heroin. On November 6th of 1998 Mr. Gardner, Mr. Bacon
4 are again arrested together. This time a Taurus 9 millimeter
5 firearm is found on the passenger seat arm rest of the vehicle.
6 I believe Mr. Bacon was the passenger and the gun was a bit
7 closer to him in this instance. And this is just within a few
8 months of the October arrest. Mr. Bacon testified about that
9 arrest as well.

10 On December 1st of 1998, Mr. Harris, Shelton Harris, is
11 arrested. Now, this is before his entry into this conspiracy and
12 this racketeering group. He meets up with Mr. Mitchell in 2000,
13 2001 at the Hickey School. But this arrest is relevant in
14 showing that Mr. Harris was already, by the time he hooked up
15 with Mr. Mitchell, an experienced drug trafficker and had
16 knowledge of the drug trade.

17 He's arrested by a detective during the course of a
18 search warrant being executed in Baltimore City. A bag and a
19 number of gel caps are found totaling up 55 or 60 grams of crack
20 cocaine.

21 On June 18th of 1999 Mr. Martin is arrested with a few
22 razor blades and some powder cocaine residue on him. On May 7th
23 of 1999, Mr. Gardner and Mr. Martin are arrested in what's been
24 referred to in this case as the I-95 stop. Maryland State
25 troopers testified about this one.

1 Trooper Forrester and Trooper Bond testified that Mr.
2 Martin is arrested in a car because of a seat belt violation. A
3 search is conducted of the car and a quantity of crack cocaine is
4 found inside a hidden compartment in the center console. It
5 weighs out to more than 50 grams of crack cocaine. You heard
6 testimony from the lab technician that did the examination in
7 this case.

8 Mr. Martin was actually driving the car where the drug
9 are found. Mr. Gardner, Shawn Gardner's arrested down the way a
10 little bit. This is on I-95. He was waiting for his friend, the
11 testimony shows. There were no drugs in Mr. Gardner's car, at
12 least no crack cocaine. But because of the relationships and the
13 proximity, they're both arrested.

14 Mr. Gardner is advised of his Miranda rights that day
15 by a trooper named Wooden, then Corporal now Sergeant Wooden, who
16 testified. In evaluating the guilt of Mr. Gardner in this case,
17 ladies and gentlemen, you can, you should consider that Mr.
18 Gardner confessed to the crime. Mr. Gardner told the corporal,
19 yeah, the drugs are mine. I went and bought them that day. I
20 have a relationship with a Dominican drug dealer named Poppi in
21 New York. I buy from him all the time. I bought four ounces
22 from him. But he shorted me a little bit so we were getting
23 together today and he gave me this additional amount because he
24 shorted me what he owed me.

25 That was Mr. Gardner's confession, which you can

1 consider in evaluating Mr. Gardner's guilt on that day, and Mr.
2 Gardner's membership in this drug trafficking conspiracy.

3 I note, ladies and gentlemen, that one of the elements
4 of the conspiracy count and one of the things you will be asked
5 to find is how much drugs were involved. The conspiracy count,
6 Count Eight, alleges 50 grams or more of crack cocaine. This
7 arrest by itself gets us over the 50 gram mark. And of course
8 there's been an abundance of evidence in this case from various
9 witnesses who did business with this group about how much crack
10 cocaine was trafficked over time, including these various arrests
11 and through other testimony.

12 January of 2000, Mr. Mitchell gets arrested as a result
13 of his activities up in Pennsylvania. Testimony from the Duganne
14 sisters in this case, who both testified that they did business
15 with Mr. Mitchell. They had a shop up in Pennsylvania in which
16 he was acquiring crack cocaine, dealing it up, packaging it into
17 gel caps and whatever else worked, and distributing it out of a
18 house in Altoona, Pennsylvania. They get busted in early 2000 as
19 a result of that.

20 We heard testimony from Natasha Wyche in this case, the
21 wife of Darryl Wyche, that he must have had some involvement in
22 this, in this case because there was bad blood between him and
23 Mr. Mitchell over something that went bad in Altoona,
24 Pennsylvania. The evidence there, when you consider the
25 relationships, is that Mr. Wyche is the supplier to Mr. Mitchell

1 during all of this Pennsylvania activity. Certainly, this is
2 important evidence in Mr. Mitchell's involvement in the terms of
3 the amounts.

4 You heard testimony from the Duganne sisters about the
5 quantities of crack cocaine that were being distributed. There
6 were ounce quantities or halves or quarters of ounces. There
7 were numerous dozens of gel caps being packaged up. Certainly,
8 ladies and gentlemen, this is more than 50 grams, which is the
9 relevant quantity for the Count Eight conspiracy count.

10 It also is worth noting, ladies and gentlemen, that
11 during the same time frame there's testimony that Shawn Gardner
12 is also distributing coke, narcotics in another part of
13 Pennsylvania, totally different part of the state it should be.
14 I believe it's Hanover, if memory serves, which is nowhere near
15 Altoona.

16 But it's notable, ladies and gentlemen, that at
17 precisely the same time Mr. Gardner and Mr. Mitchell, according
18 to this evidence, are both pursuing identical business
19 opportunities in the same state for the same reasons, to get the
20 advantage of small town deals. And when you look at the timing,
21 given Mr. Wyche's involvement and Mr. Mitchell's Pennsylvania
22 trafficking, it's certainly an easy inference that Mr. Wyche was
23 one of the suppliers Mr. Gardner would have been relying on at
24 the same time. At a minimum, it shows some relationship.

25 We have some additional arrests involving Mr. Mitchell

1 in January and April of 2000, in each instance being arrested
2 with some crack cocaine. One instance it was some heroin.
3 Another instance -- again, this is all further evidence of
4 involvement.

5 Search warrants are executed at various locations
6 during the course of the case. We're moving past the arrests
7 now. We have a search warrant of Amity Street on June 21st of
8 2002, which was the residence at that time of Mr. Harris.
9 There's a substantial quantity of crack cocaine found during the
10 course of that search warrant. We heard testimony from literally
11 everyone who was living in the house at that time, including his
12 mother, his sister, and his girlfriend, all confirming that the
13 drugs came out of Mr. Harris's room and that they belonged to Mr.
14 Harris.

15 The search of Seamon Avenue somewhat later, a couple of
16 years later, January 22nd, 2004, this is after some of his
17 associates had been arrested, leads to the recovery of a .45
18 caliber Llama hidden in a kitchen furnace closet, along with some
19 other items, including the rap lyrics that there's been so much
20 testimony about.

21 Now, all of that is fine and it shows a series of
22 arrests and it shows that the defendants made their living to a
23 very great degree as drug dealers during the times charged in the
24 indictment. We have 1996 arrests, '97, '99, 2000. And then we
25 have some search warrants even later. We have Pennsylvania. We

1 have I-95. We have Baltimore City. That the defendants are
2 operating as drug dealers is clear just from the arrest patterns,
3 ladies and gentlemen.

4 But more is required to prove a conspiracy or an
5 enterprise under the law, as the defense has pointed out many
6 times and as they pointed out during cross examination of the
7 various police officers. More is required. And what is required
8 is that the activity was taking place as an enterprise and, for
9 purposes of the conspiracy count, as a conspiracy. So what is
10 that evidence? Stepping beyond the arrests and just the police
11 activity, what is the enterprise and conspiracy evidence? Well,
12 let's turn to that now.

13 And what it boils down to here is the evidence proving
14 that the defendants operated, not just individually, but as an
15 alliance and as a family. And those are words I'm quoting from
16 the evidence in this case, "alliance" from lyrics, and the word
17 "family" from Mr. Montgomery's testimony.

18 There is a core group that emerges from the body of the
19 evidence in this case, ladies and gentlemen. I'll discuss where
20 the core group comes from and how they're structured. But the
21 evidence by way of summary includes Mr. Mitchell, Mr. Gardner,
22 Mr. Martin, but not only them, and later on Mr. Harris. In fact,
23 it also includes Darryl Wyche. It includes Will Montgomery. It
24 includes Darryl Bacon. To a lesser extent it includes Aaron
25 Holly, who frequently distributes on behalf of the group. Later

1 Mr. Harris. And it also ultimately includes the entity known as
2 Shakedown Entertainment, which we know was an incorporated
3 company under Maryland law, and Mr. Mitchell was one of the
4 incorporating figures. He held the position either as president
5 or incorporating person, if memory serves.

6 So all of these individuals and, ultimately, Shakedown
7 Entertainment are part of this core group.

8 There's been a lot of talk about Shakedown and
9 Sheistyville, ladies and gentlemen. Just so it's very clear,
10 they're not synonymous with the RICO enterprise and the
11 conspiracy in this case. They are not the same thing. The rap
12 company in this case is only part of the RICO enterprise. They
13 are not equivalent. They are not charged that way. And you
14 don't need to find that they're charged that way. Indeed, we
15 don't hear any evidence about rap activity in this case until
16 after the RICO enterprise has already been operating for a period
17 of time.

18 Your Honor, may I set up this easel?

19 THE COURT: You may.

20 MR. HANLON: Your Honor, I'm afraid I'm going to block
21 the Court's view a little bit.

22 THE COURT: I understand. Sure.

23 MR. HANLON: Ladies and gentlemen, if anybody has any
24 difficulty seeing that board, I hope you'll raise your hands and
25 I can fiddle with it. This is a display that Mr. Harding showed

1 you at the beginning of this case. It showed the government's
2 theory of how the group operated. It is exactly what the
3 evidence ultimately showed in this case.

4 The core group members that I just mentioned are seen
5 on the easel. They include our defendants, who are at the
6 distribution level. They also include various suppliers like Mr.
7 Wyche, Poppi, who is the New York figure, Willie Fryson, who's
8 also known as Card, and others.

9 This is the group, ladies and gentlemen, and ultimately
10 the rap entity as well, that formed part of this RICO conspiracy.
11 And how do we know that? What is the evidence proving that?

12 Well, there have been testimony from various members of
13 the core group who did business with this organization, who are
14 part of the conspiracy, who are part of the enterprise, or who
15 did business with the enterprise, who came to court to testify
16 about it.

17 One of the practical realities of conspiracy and
18 racketeering law, ladies and gentlemen, is to prove the existence
19 of a conspiracy it's often necessary to get into the conspiracy
20 and bring its members to court to testify.

21 Conspiracies and racketeering organizations thrive on
22 silence. They thrive on secrecy. They don't write down or
23 record their activities. In this case, we have about as close as
24 you get to a recording of the activities of this group, courtesy
25 of Mr. Harris. But that's not enough.

1 To break up a criminal conspiracy, you got to bring
2 people to court to talk about it. And that's what was done in
3 this case.

4 You heard from witnesses on that witness stand,
5 including Darryl Bacon, Ernest Reynolds, who dealt with the
6 defendants, Mr. Gardner, Mr. Martin early on. You heard from
7 Natasha Wyche, the wife of Darryl Wyche, who is certainly a
8 member of this unit. You heard from Dwayne Denham, who is one of
9 the close associates of Mr. Wyche. You heard from William
10 Montgomery, who is certainly a member of the racketeering
11 enterprise in the conspiracy. You heard from them. And you also
12 heard from two individuals who were associated, but maybe not
13 core members. You heard from Rodney Hayes. And you heard from
14 Chris Dobropolski, who was approached, who was recruited or
15 attempted to be recruited in the organization after Mr. Harris
16 and Mr. Mitchell were locked up for a while.

17 All of these witnesses testified about their
18 involvement. All of them have admitted to their involvement in
19 the affairs of this enterprise and in the affairs of this
20 conspiracy. In fact, it was the first thing they talked about.

21 Darryl Bacon is a drug dealer. He testified about
22 that. He testified about doing business with this organization
23 and with this conspiracy.

24 He describes being involved with Mr. Martin and Mr.
25 Gardner early on, but very importantly also describes being

1 involved with Mr. Mitchell early on. What emerges from Mr.
2 Bacon's testimony is not just that these are individual drug
3 dealers operating and looking out for just themselves on the
4 street, but, in fact, they benefited from being involved with
5 each other. They supported each other's activities.

6 Mr. Bacon gave specific examples of this during his
7 testimony. It included sharing suppliers like the Wyche brothers
8 and Card, Willie Fryson, and Poppi in New York.

9 Mr. Bacon testifies, as does William Montgomery, about
10 taking trips to New York. Mr. Bacon described traveling to New
11 York with Mr. Gardner and Mr. Martin. He described a trip that
12 Mr. Mitchell took to New York but did not testify it was drug
13 related. Mr. Bacon did not say that.

14 Mr. Montgomery described a drug-related trip that Mr.
15 Mitchell took to New York to purchase narcotics, along with Mr.
16 Martin and along with Mr. Gardner. But clearly, we have New York
17 travel. And of course, there's testimony that the New York
18 dealer is who? According to Mr. Bacon, it's a Poppi. Poppi, the
19 New York supplier.

20 And in assessing Mr. Gardner's guilt individually,
21 ladies and gentlemen, separating him out from the other
22 defendants for a moment, ladies and gentlemen, Mr. Gardner
23 confessed that after the I-95 stop that his Dominican supplier
24 was a guy named Poppi in New York. That's exactly what Mr. Bacon
25 testifies to and it's consistent ultimately with Mr. Montgomery's

1 testimony.

2 Mr. Bacon provided a couple of specific examples of how
3 the group actually operated. He, for instance, described doing
4 business with Avon, who is another member of the distribution
5 level of this, sometimes below the suppliers, sometimes above the
6 suppliers, who are the defendants in this case.

7 Mr. Bacon described one instance where he had some
8 crack on him that he had purchased from Willie Mitchell, who had
9 purchased it from Darryl Wyche. One of the reasons Mr. Bacon
10 talked about that, had to do it that way is because he didn't
11 have such a great relationship with Mr. Wyche but he could rely
12 on Mr. Mitchell for contacts with Wyche.

13 And of course, during the same time frame and
14 throughout the life of this conspiracy, Mr. Bacon described Mr.
15 Gardner and Mr. Martin buying from Darryl Wyche.

16 So Mr. Bacon's got this crack that he bought from
17 Darryl Wyche. And then he cooks up with Mr. Gardner, Goo, and
18 they're going out to buy some marijuana from Avon. And on that
19 day Mr. Bacon gets arrested with the crack. This is one of the
20 criminal charges that he has in his background, and only one of
21 many examples in which Mr. Bacon described the conduct with this
22 organization. Conspiratorial conduct, not just individual
23 conduct. Sharing suppliers, sharing resources, looking out for
24 one another. Trading guns as part of the business.

25 You hear about that both from Mr. Bacon and also from

1 Mr. Montgomery. Going to New York, protecting one another,
2 sharing your suppliers. All of this are the way that the members
3 of this conspiracy are able to operate and they're able to
4 support each other's activities.

5 Ernest Reynolds describes a similar picture. At an
6 earlier stage of the affairs, of course, he was the individual
7 who introduced Mr. Gardner and Mr. Martin to the business. At
8 the time Mr. Martin and Mr. Gardner got involved, Mr. Reynolds
9 had his own unit working with Card, Mr. Fryson, and another
10 individual named NA. They had some success. And it was at this
11 time that Mr. Gardner and Mr. Martin began to run shops.

12 Ultimately, Mr. Reynolds gets locked up. Mr. Gardner,
13 Mr. Martin, we know from the testimony of the other members of
14 this group, continued on. And we know from Mr. Bacon that Card
15 is one of the people that emerges as a common supplier to this
16 group. Card, Poppi, and Darryl Wyche feeding all of the group at
17 the same time during the course of the life of this conspiracy.
18 Maybe not the entire time, but certainly throughout the
19 conspiracy at various times.

20 Natasha Wyche confirms Mr. Bacon's testimony powerfully
21 only from the Wyche end of the conspiracy. Mr. Bacon testifies
22 that Willie Mitchell, Shawn Gardner, and Mr. Martin are all
23 customers of Darryl Wyche.

24 Well, we hear confirmation of that from Natasha Wyche,
25 Mr. Wyche's wife. She described a specific instance in which Mr.

1 Wyche picked up money from Mr. Gardner and Mr. Martin on the
2 street. She describes numerous instances in which Mr. Mitchell
3 would purchase drugs from Mr. Wyche. She wasn't always present
4 for the transactions, ladies and gentlemen. She's not standing
5 there while the transactions take place. But they would visit
6 each other at the Bryant grocery, which was open during the
7 1997/'98 time frame. And they would go in the back and they
8 would do a deal and they would leave out, which shows at a
9 minimum that Mr. Mitchell is carrying on with Mr. Wyche at least
10 as early as that, if not earlier, and continuing on into '99,
11 2000, 2001 and thereafter, as we know from the testimony of Ms.
12 Wyche, who continued to be aware of her husband's interaction
13 with Darryl Wyche, and also Dwayne Denham and, also, frankly, the
14 evidence of the phone calls between Mr. Mitchell and Mr. Wyche in
15 connection with the Wyche brothers' homicide.

16 Mr. Montgomery is another testifying individual who
17 provides us a great deal of insight into not just the drug
18 trafficking organization, but the fact that the defendants worked
19 as a unit, as a group. Mr. Montgomery is, for lack of a better
20 term, a hit man. There's really no getting around that, ladies
21 and gentlemen. He testified about that himself as one of the
22 first things he testified about. He's a hit man. He's a drug
23 trafficker and he's done violence and murder in the service of
24 his drug trafficking activities. And he's a member of this
25 group.

1 What Mr. Montgomery testifies to is on point with what
2 Mr. Bacon testified to in almost every respect. Consistent drug
3 trafficking activities with Mr. Gardner, Mr. Martin, Mr.
4 Mitchell. Mr. Harris shows up later, that's to be sure. But the
5 first three defendants under the Wyche distribution ring,
6 sometimes making use of the New York supplier as well.

7 Mr. Montgomery, in fact, specifically describes an
8 instance in which they travel to New York, all of them, Mr.
9 Gardner, Mr. Martin and Mr. Mitchell, for the purpose of engaging
10 in drug transactions up in New York.

11 From Rodney Hayes and Chris Dobropolski -- these are
12 individuals I'll discuss in a bit more detail later because they
13 provide specific information related to the Wyche brothers and
14 McCaffity murders. But they provide similar information, we've
15 moved into 2002 at that point, because they're providing
16 information that's specific to particular counts, as we'll see in
17 a little while.

18 In assessing all of these cooperators, ladies and
19 gentlemen, it's important to bear in mind that they all bring a
20 great deal of baggage into this courtroom. They have their
21 criminal records. They have the crimes that they've been
22 arrested for. In some instances they have crimes hanging over
23 their head, which they were cross examined about, of course.
24 Every one of them brings that into this courtroom.

25 Mr. Montgomery impeaches himself as powerfully as any

1 witness could. He's admitted to numerous murders and he's
2 admitted to numerous criminal offenses.

3 You should consider all of that in weighing the
4 credibility of those witnesses, of course. But it's important to
5 bear in mind one other thing, ladies and gentlemen. The issue in
6 assessing these, these accomplice witness's testimonies is not
7 whether or not they are good citizens and not whether or not they
8 received an award for citizen of the year. The critical issue is
9 whether or not they're telling the truth from that witness stand.
10 That's the important question.

11 They're not nice people. You might not want to have
12 lunch with them. But are they telling the truth? In assessing
13 that, that ladies and gentlemen, compare their testimonies
14 against one another.

15 Mr. Bacon and Mr. Montgomery, consistent on so many
16 points -- the identities of the suppliers, the activities of the
17 organization, how the defendants operated and helped one another.

18 They're consistent with how the organization operated
19 in terms of its use of guns and they're consistent not only by
20 implicating the defendants in our case, but they implicate each
21 other as well as themselves. And they testify about their own
22 criminal records.

23 It's also worth pointing out, ladies and gentlemen,
24 that many of the witnesses who testified in this case provide
25 information in the grand jury before they were ever prosecuted

1 for anything. That goes for Mr. Hayes, by way of example, as
2 well as Mr. Bacon. And in the case of some other witnesses, such
3 as Mr. Dobropolski, they began as cooperating witnesses with a
4 plea or some expectation of benefit. But Mr. Dobropolski was
5 very clear on that stand. At this point he's been prosecuted
6 over and over again and he's really not getting anything for
7 testifying. Assess that in weighing the credibility of these
8 witnesses as well.

9 Ultimately, the image there emerges as an enterprise, a
10 group of these defendants with a common purpose, which is drugs,
11 robbery and murder, an organization that is comprised of the
12 individual operations of the group culminating in the 2002
13 murders, but then continuing. They share resources together,
14 such as suppliers. And they help each other when they need to.
15 And there is a continuing unit. There is a core group of people,
16 including Montgomery and Bacon, as well as our charged
17 defendants, ultimately joined by Mr. Harris, that unquestionably
18 demonstrates that this is a racketeering enterprise.

19 Now, specific examples of how they work together come
20 up in really three ways -- the drug business, the robbery
21 business, and the protection business. Looking at the drug
22 business first.

23 The defendants worked together in numerous ways to
24 maintain their businesses. Number one, they shared and exchanged
25 drug suppliers in order to maintain a common supply. That

1 includes Darryl Wyche, it includes Card, it includes Poppi in New
2 York. You will hear that from Mr. Montgomery and from Mr. Bacon,
3 who were party to these transactions.

4 It includes operating together and actually helping
5 each other in specific transactions. The trips to New York,
6 which I've already talked about. Distributing and operating
7 together and pulling money together in order to buy drugs. They
8 buy from each other when it's appropriate.

9 We have Darryl Bacon buying from Mr. Mitchell. We
10 have, according to Mr. Bacon's testimony, Wayne is providing
11 narcotics to Mr. Mitchell. That is Mr. Martin, Wayne, Shelly
12 Wayne Martin is providing drugs to Mr. Mitchell for a period of
13 time during the 1990's. They share the same distributors when
14 it's common. Occasionally, Avon and Aaron Holly are obtaining
15 for members of this group. In some instance, you have it
16 flip-flopped where Avon is providing marijuana to Mr. Bacon.
17 It's whatever is convenient and it's whatever works. And that is
18 how you maintain a consistent, reliable drug trafficking
19 organization. Flexibility and function is what characterized
20 this organization.

21 When it was appropriate, they would go to great lengths
22 in order to get money for each other's attorneys. That was one
23 of the key motivations in the June 7th, 2002 murder of Tonya
24 Jones Spence.

25 We also know, ladies and gentlemen, that in the 2002

1 time frame, Darryl Bacon contacted Mr. Martin and asked him for
2 assistance in obtaining a lawyer. Mr. Martin sent him a couple
3 of thousand dollars, according to Mr. Martin, according to Mr.
4 Bacon's testimony. So getting money for each other's attorneys,
5 which is considered an important part of beating the charge, is
6 part and parcel of how this group operates.

7 They provide each other with ready opportunities when
8 they get released from jail. We have Mr. Harris singing later on
9 in the case, celebrating how the Shakedown and Sheistyville group
10 is going to carry on even after everyone gets out of jail, ladies
11 and gentlemen. But we also have Mr. Bacon's letter written to
12 Shelly Wayne Martin, in which he talks about opportunities after
13 Mr. Bacon comes home.

14 Mr. Bacon talks about being willing to ski mask it up,
15 being willing to break down doors, and knowing that he's going to
16 be able to get an eighth from his friends, that's a drug, a drug
17 comment, when he comes home. Ready opportunities when you get
18 out of jail. Waiting for your friends to get out of jail.
19 Getting money together for your friend's attorney so they can
20 come back from jail. Only one of many ways that this
21 organization operates and maintains itself.

22 Trading guns is something that we've seen over and over
23 in this case. Mr. Bacon testified about trading guns both with
24 Mr. Martin and with Mr. Gardner during the course of their
25 interactions in the '90s and thereafter.

1 Mr. Montgomery testified about how, in preparation for
2 the Spence murder, Mr. Gardner and Mr. Martin were getting
3 together .40 caliber, but expressed concern about a .40 caliber
4 having bodies on it already.

5 We know from Mr. Hayes that there were exchanges of
6 guns involving him and Mr. Mitchell and Mr. Harris before, during
7 and after the McCaffity and Wyche murders. So trading guns,
8 which are a tool of the drug trade, is an important part of this.

9 Robberies are an important part of how this business
10 operates. We know that from the testimony of Mr. Bacon, we know
11 that from the testimony of Mr. Montgomery, both of whom testified
12 about planning robberies, doing home invasions. We hear the same
13 thing from Mr. Hayes later on in the 2002 time frame, by which
14 time Mr. Harris has joined the enterprise and has become a member
15 of the conspiracy.

16 There are specific examples where Mr. Bacon and Mr.
17 Montgomery testified that they were with the defendants -- Mr.
18 Martin or Mr. Gardner's names come up a great deal -- and they
19 would jump out on people. Sometimes somebody would wait in the
20 car. Maybe the other two guys would jump on somebody. They
21 shake them down for some money. Sometimes this had to do with a
22 simple robbery. Sometimes it had to do with collecting a debt.

23 Probably the best evidence of the use of robberies in
24 furtherance of this conspiracy in this enterprise are, of course,
25 the 2002 murders, which really are the heart of the case, the

1 Wyche murders, the Spence murder, which were both planned as
2 robberies, and, of course, the planned robbery of Goose, which we
3 heard about during Mr. Montgomery's testimony.

4 Ultimately, this is a family and an alliance that looks
5 out for itself. The members look out for each other. Drug
6 dealer relying on people for protection, relying on people
7 because they cannot go to the police like ordinary citizens.
8 That's the heart and soul of this organization, as laid out on
9 that map. The drug distribution, the advantages, the guns, all
10 of that. But the self-protection of the organization is a
11 critical, critical part of how it operated.

12 And it needs to operate that way. If nothing else,
13 this is what brings drug traffickers together. The Rice
14 organization has been sort of put out in this case as sort of the
15 hallmark of all drug trafficking organizations, like something
16 out of the movies. But even its own members, Travis Golder and
17 Eric Clash, who testified in this case, described it as nothing
18 more than a couple of friends who got together and dealt drugs.
19 But they were there for each other. Ernest Reynolds, who had
20 great success dealing heroin with NA and with Card, described
21 that they operated very independently. But they were a unit when
22 they needed to be. A beef with one of them meant you had a beef
23 with all three. And that was an advantage.

24 And recall the testimony of Special Agent Ellington in
25 this case, the DEA agent. He testified that the need of drug

1 dealers to protect one another and rely on one another for
2 protection to resolve street beefs, to obtain guns, and so forth
3 is a critical part of how the organizations operate.

4 That's what this is about, protecting one another. And
5 that's one of the parts of the enterprise in a conspiracy used in
6 this case. And it does bring us, ladies and gentlemen, into the
7 various murders that are charged in this case.

8 Mr. Bacon, Mr. Montgomery, for their own parts,
9 discussed specific examples of relying on their fellows, relying
10 on their friends to help with turf battles. An individual named
11 Bubbles and Tuffy in the case of Mr. Bacon. And in Mr.
12 Montgomery's case he described having a dispute with a drug
13 dealer named Corey Smith and Tyree Stewart. In both instances,
14 they were able to call on Mr. Gardner, and in Mr. Bacon's case he
15 called on Mr. Martin as well to help him out, and the defendants
16 were both available.

17 No better example of this protection, of this coming
18 together to offer assistance in this case, possibly the best
19 example, is the Hammerjacks case, in the wake of the Hammerjacks
20 incident. Mr. Mitchell decided rightly or wrongly that his life
21 was in danger because there was a contract out on him. So he
22 called on his friends to help him. We have Mr. Martin and Mr.
23 Gardner during that time frame going and warning Darryl Bacon,
24 look out, Willie's got, Bo's got somebody after him. And, of
25 course, we have all of the evidence about carrying out that

1 murder.

2 The evidence, in fact, is that Mr. Harris and Mr.
3 Mitchell carried out the murder of Oliver McCaffity together.
4 And all of this is later celebrated in Shelton Harris's rap
5 lyrics.

6 The Claudus Lassiter case is another example. In the
7 wake of the Wyche murder, Mr. Martin and Mr. Gardner become aware
8 that Claudus Lassiter is ratting them out, that he's putting them
9 in the case with the police and he's getting them into trouble.

10 So the response per Rodney Hayes, a different witness,
11 but corroborating Darryl Bacon? Rodney Hayes reports and
12 testified that during this time he became aware of a letter sent
13 from Mr. Mitchell to Mr. Harris, care of TM, Tony Montana -- I'm
14 going to talk about his testimony in a moment -- asking Harris,
15 who by that point was an experienced hit man, to kill Claudus
16 Lassiter. Protection.

17 So we've got all of the defendants involved in the
18 Claudus Lassiter situation. Gardner, Mr. Gardner, Mr. Martin
19 warning Darryl Bacon. Mr. Mitchell, Mr. Harris discussing a
20 possible hit. Just like with Oliver McCaffity.

21 Loose structure, flexibility and function. That is how
22 real conspiracies operate. They don't operate with flow charts
23 and graphs and they don't fly flags. They stay quiet, they stay
24 discrete, but they stay loyal. Loyalty above all, no dishonor,
25 never talk to homicide, it's just us against the wall. That's

1 the language of this group and that's how it operated. And it is
2 a real conspiracy and a real enterprise in every sense of the
3 word.

4 And ultimately, of course, that brings us to the
5 murders of five human beings in the year 2002. And let's talk
6 about that, the real heart and soul of this case.

7 The murder of Oliver McCaffity and Lisa Brown in
8 February of 2002 begins with the aftermath of this Hammerjacks
9 fight. For the first couple of weeks of this trial, ladies and
10 gentlemen, you may have wondered if we weren't trying a knife
11 charge in this case. It was all of this talk about a fight and a
12 hit and all this other kind of stuff. What all of that was
13 relevant to was motive.

14 We start here with a party for Kevin Lyles at Def Jam.
15 Things go bad on the dance floor. There's a knife fight. People
16 get hurt. And there's bad blood between Willie Mitchell and the
17 Rice organization now. The bad blood is so serious, in fact,
18 that Mr. Mitchell absolutely believes he's going to be hit. He
19 believes there's a contract out on him.

20 How do we know that Mr. Mitchell felt this way? For
21 starters, there was real discussion of actually doing something
22 to Mr. Mitchell amongst the Rice group's members. We heard that
23 from Mr. Golder. We heard that from Mr. Clash. It doesn't
24 appear that, to their knowledge, they don't know whether it went
25 anywhere. But it's very clear that this was discussion, that

1 this was something being taken seriously within the Rice group
2 and on the street.

3 And most importantly and, in fact, this demonstrates as
4 powerfully as anything could, we know that Mr. Mitchell was
5 concerned about this because Jaquetta Smith said he was, his
6 girlfriend, the mother of his children. Testified, reluctantly,
7 that during this time frame Willie Mitchell did believe his life
8 was in danger, did believe that there was a contract out on him,
9 and identified Woody as the person he believed was coming after
10 him. That's proof positive of Mr. Mitchell's concerns about
11 this. And of course that's the background of the murder itself.

12 Mr. McCaffity and Ms. Brown are found dead inside Hasim
13 Rahman's car. You remember the scene, ladies and gentlemen. I
14 don't have use of the DOAR system right now. But you remember
15 the scene. A man and a woman shot dead in a crashed car. The
16 car itself was smashed up against a tree and a piece of concrete
17 barricade at the end of a hill on Edgecombe Circle.

18 A child looking at this crime scene would be able to
19 conclude that this was a trap. Mr. McCaffity and Lisa Brown are
20 both shot in the rear right in Mr. McCaffity case, and in the
21 rear left in Ms. Brown's case. Ms. Brown's a passenger, Mr.
22 McCaffity was in the driver's seat.

23 The angle of the fire, combined with the fact that all
24 of the doors and the windows to the car were shut when the fire
25 department and police arrived, prove beyond any doubt that the

1 shooter was sitting in the back seat when this happened.

2 Couldn't have been from outside the car because if it had been
3 there would have been damage to the exterior of the car. There
4 was no such damage.

5 The angle of the shots makes it clear that the shooter
6 was in the back seat. Absolutely crystal clear.

7 And that, combined with the environment in which the
8 car was found. This is a residential section of Baltimore,
9 ladies and gentlemen. But you've seen photos and you can see it
10 there. This is sort of a wooded area that's separated from some
11 homes. The car was isolated from houses. Although it's a
12 residential area and it's in the city, it's actually somewhat
13 remote, particularly in the middle of the night, which is when
14 the evidence shows Mr. McCaffity and Ms. Brown were killed.

15 So they're in an isolated area. They evidently are
16 going to meet somebody who gets into their car and shoots them
17 both in the head. This is an execution and it's a trap.
18 Recovery of the bullet fragments from the car indicate that a
19 .380 or a .357 weapon are used. And there are no shell casings,
20 which suggest a revolver was used because a revolver would retain
21 the shell casings.

22 So we have a trap and we have a shooter killing two
23 people in a car in the back seat and leaving them to die after
24 the execution. That's the scene.

25 Who set the trap? That's, of course, the real question

1 for us. The evidence is Mr. Mitchell, with the assistance of Mr.
2 Harris. Start with motive.

3 We've already talked about Mr. Mitchell's motive. He
4 believed Oliver McCaffity was going to kill.

5 What is Mr. Harris's motive? Ladies and gentlemen, Mr.
6 Harris's motive is Willie Mitchell's motive because Mr. Harris,
7 Hard Roc, is Bo's man. He sings about it. Bo's his general.
8 And his music and his family have testified in this case and make
9 it very clear that Mr. Harris is loyal to Mr. Mitchell above all.
10 He's a hit man in training, that's what the evidence in this case
11 shows. And this is part of his training. So Bo's motivation is
12 Mr. Harris's motivation. That's the heart of this group, the
13 conspiracy and the racketeering enterprise.

14 How do we know that they set the trap, leaving aside
15 motivation? Well, for starters, the phone contacts between Mr.
16 Mitchell and Mr. McCaffity. Let me put this thing on the screen
17 one more time.

18 Throughout the evening, ladies and gentlemen, we have
19 Mr. McCaffity and Mr. Mitchell on the phone together, throughout
20 the night, in fact, beginning at 5:00 and continuing on until
21 after, until right around the time, well, frankly, until Mr.
22 McCaffity loses his life. The evidence in this case, including
23 cell phones that were recovered from the car, indicate that Bo
24 Mitchell was the last person that Mr. McCaffity ever called. Mr.
25 McCaffity did talk to someone else on the phone. He talked to

1 his uncle that evening. But Mr. Mitchell was the last person
2 that Mr. McCaffity ever called. And they're on the phone
3 together all that night, intermittently talking to one another.
4 And it's consistent with two people getting together to meet for
5 some reason.

6 It's like you're going to meet somebody for dinner,
7 you're going to meet somebody for a meeting, so you're on the
8 phone. Where are you going to get there? When are you going to
9 be here, so forth? That's what the evidence shows, they were
10 getting together.

11 Perhaps the most powerful evidence of that is the GPS
12 data. As it happens, Hasim Rahman's car had a GPS device
13 attached to it. So we can actually track its movements in the
14 hours leading up to Mr. McCaffity's death. And of particular
15 note here, ladies and gentlemen, is in the last few minutes
16 before Mr. McCaffity died, a series of GPS hits that correspond
17 with his last couple of phone calls with Mr. Mitchell, you
18 actually see a series of hits, 2320, 2322, 2324, 2324 and a few
19 seconds, ending at 2338, in other words, showing that Mr.
20 McCaffity is driving around, looking around the neighborhood
21 before he ends up at the incline, which is where he and Ms. Brown
22 are murdered.

23 He's driving around the neighborhood and he's engaging
24 in phone calls that night, getting ready to meet who? He's
25 getting ready to meet Bo. And in particular, when you consider

1 the last phone call with the GPS data, it's very clear that Mr.
2 McCaffity's being led some place and he's being led some place in
3 order to meet someone in particular. That person is Willie
4 Mitchell. We know that from the phone calls. The GPS data and
5 the phone calls correspond exactly.

6 In addition, ladies and gentlemen, we also know from
7 Rodney Hayes that during this same approximate time Mr. Harris --
8 I'm sorry -- know from, yes, Mr. Rodney Hayes, who testified
9 approximately the same time, Shelton Harris is admiring Mr.
10 Hayes's .380 caliber handgun, looking at it. Looking at it for
11 some reason. And of course it goes missing right around that
12 time, right around the time that Mr. Hayes is coming home and
13 sees police investigating the McCaffity murder scene on Edgecombe
14 Circle.

15 That's evidence of who Mr. McCaffity was going to meet,
16 the man that had a motivation to kill him. And Mr. McCaffity may
17 not have had any idea that Bo Mitchell suspected that. And of
18 course evidence that the hit man is in the process of obtaining a
19 .380 caliber weapon, or at least reviewing one in advance of the
20 murder.

21 In addition to that, ladies and gentlemen, Mr. Mitchell
22 and Mr. Harris have done us the courtesy of effectively admitting
23 to go this crime, both in words and in music in Mr. Harris's
24 case. The words are their statements, in effect, their
25 confessions to Chris Dobropolski. The music is the Shakedown

1 lyrics. Let's begin with Mr. Dobropolski first.

2 Mr. Dobropolski makes contact with Mr. Mitchell and
3 with Mr. Harris while they're locked up together. For whatever
4 reason, Chris Dobropolski has this reputation as a tough guy. He
5 didn't really seem to quite understand the reputation himself,
6 but it's out there.

7 We know from the Shakedown lyrics that Mr. Harris is an
8 admirer of Chris Dobropolski. He talks about, my nigga, Chris D.
9 He cracks spines. He has Chris Dobropolski's name and phone
10 number written on documents taken out during the search of his
11 home at Seamon Avenue. For whatever reason, Mr. Harris's great
12 admiration for Mr. Dobropolski, and he's got this reputation as a
13 hit man, ironically enough, in the Park Heights community.

14 Mr. Harris recruits and approaches Mr. Dobropolski and
15 tries to get him interested in becoming part of this group, part
16 of this unit. And as part of that allure, to bring him in, to
17 interest him, he brags about the murder of Oliver McCaffity. And
18 Mr. Harris provides detail of that murder that only the murderer
19 could have provided.

20 Some of it may have been known. Mr. Harris is dead on
21 spot about everything, but some of it maybe he could have picked
22 up on the street. It's unlikely that he would have known just
23 from the street that two people had been shot dead in Hasim
24 Rahman's car from the back seat. It's unlikely that somebody who
25 wasn't actually there would have been able to describe the crime

1 to such precision. But what is utterly impossible, what is
2 utterly impossible is that Mr. Harris, if he were not the
3 murderer, would have been able to form an opinion about
4 particular things that happened at the murder. For example,
5 describing how the heads of the two victims went down so slowly
6 after the crime, and describing the motivation for killing Lisa
7 Brown, which is because she was just there. This is what he told
8 Mr. Dobropolski and what that witness testified to.

9 And most important of all, in terms of corroborating
10 Mr. Dobropolski, Mr. Dobropolski even knows, according to Mr.
11 Harris, who steps out of the car, that after the crime the car
12 rolled down on its own and crashed near the end of the hill. We
13 know that from the GPS data. How could Mr. Harris know that
14 unless he was really there?

15 This is powerful corroboration that Mr. Dobropolski
16 received this information from Shelton Harris and that Mr. Harris
17 was describing a crime he committed. Powerful.

18 Combined with the motivation, combined with the phone
19 records, combined with all of the evidence in this case, this is
20 evidence which proves beyond any doubt that Shelton Harris, the
21 hired hit man of Willie Mitchell, committed this crime. We know
22 that Mr. Mitchell planned the crime from a combination of the
23 phone records and his own statements to Chris Dobropolski,
24 effectively confirming everything that Mr. Dobropolski had
25 received from Mr. Harris; talking about how, sure, I put work in

1 for him and he put work in for me and so forth. Confirms
2 everything. Adopts it, in effect, in an attempt to bring Mr.
3 Dobropolski into the crew.

4 Again, just because they're locked up doesn't mean they
5 shut down business. Mr. Harris sings about that. Just cause my
6 man, Bo, locked up doesn't mean our business is going to end.
7 I'm paraphrasing.

8 All of that proves the guilt of the defendants beyond
9 any reasonable doubt, ladies and gentlemen, the statements to Mr.
10 Dobropolski in particular. But there is one other thing which I
11 haven't talked about yet. And that's Mr. Harris's palm print
12 found on the driver's side rear window of the murder vehicle.
13 His palm print on the car. And this is an individual who sings
14 about running up on the left side of cars. This is a guy who
15 sings about introducing Woody to the afterlife.

16 The attempts to suggest that that is a reference to a
17 cartoon character or some other term are respectfully laughable.

18 This is an individual who sings about blowing up
19 people's brains, killing you and the bitch next to you. And his
20 palm print is found on the rear window of a car in which a guy
21 named Woody and his girlfriend are shot dead in the head.

22 That's proof beyond a reasonable doubt, ladies and
23 gentlemen. That is proof without any doubt of Mr. Mitchell and
24 Mr. Harris's planning of this crime and their carrying out of the
25 crime. The forensics, the phone calls, the admissions to Mr.

1 Dobropolski, all of it prove that as to the McCaffity murder.
2 The lyrics simply confirm it. Simply confirm it.

3 Roc, ah, introduce you fucks to the afterlife. Woody,
4 I know you feel me to the four-fifth.

5 The Wyche murders are the next murder charge in the
6 indictment. Planned as a robbery murder. That's quite clearly
7 what the crime was, the attempted robbery of two drug dealers or
8 one drug dealer and his brother and their execution in the style
9 of the McCaffity/Brown crime, very much in furtherance of the
10 activities of this conspiracy.

11 What's the background of the Wyche crime? The
12 background of the Wyche crime, ladies and gentlemen, is that Mr.
13 Wyche is a drug dealer, as we've already heard. We hear that
14 from his wife. We hear that from Dwayne Denham. We know that he
15 did business with members of this conspiracy from early on. We
16 know that from Darryl Bacon and William Montgomery.

17 We know that Mr. Mitchell was one of his customers. We
18 know that all of the defendants, with Mr. Harris sort of tailing
19 in on the end, were customers at one time or another with Mr.
20 Wyche, who's the victim in this case.

21 We also know that Mr. Wyche comes into a supply of
22 money and narcotics just a few days before his murder, on the
23 early and the late evening of March 24th and the late evening, or
24 the early morning of March 25th of 2002, if I have my dates
25 correct. Yes.

1 We also know that there was a little bit of bad blood
2 in the 2000 time frame after the Altoona, Pennsylvania arrests
3 between Mr. Mitchell and Mr. Wyche. There was a little bit of
4 bad blood between the two of them. Natasha Wyche testified about
5 that. It wasn't clear what that was all about. But there was a
6 little bit of an angst between them.

7 We also know from Mr. Wyche's comments and his phone
8 arrangements, as testified to by Damita Green and as testified to
9 by Natasha Wyche, that as of March 24th of '02, although he was
10 planning on seeing Bo later that night, it had been a while since
11 they saw each other. So there was a little, something going on
12 between these two guys. It's not a great deal of evidence and we
13 know there's a drug history. But there was some business between
14 them and the relationship wasn't what it had been originally.

15 At a minimum, we know that as of March 24th, Mr. Wyche,
16 with money and drugs that are fresh, is going to be a fresh, nice
17 opportunity for a big score from a group that's committed to
18 doing robberies and murders in aid of racketeering and drug
19 activity.

20 So what's Darryl Wyche's last day? What are his plans
21 that day? What do we know about the background?

22 Well, he was going to see Bo at the time he died. That
23 much is clear from Ms. Wyche, from his wife, Natasha Wyche, and
24 from Damita Green, who spent time with him and some other people
25 at Brandy's house just before, within a couple of hours of Mr.

1 Wyche's death.

2 According to Natasha Wyche, Mr. Wyche had gotten a
3 recent load of narcotics, a couple of packages, and he had
4 \$23,000 that Natasha had helped him count up within a couple of
5 days of the murder. He leaves their house that day -- this is
6 the last time Natasha Wyche ever saw her husband -- with his
7 customary book bag, which is what he used to carry drugs, money,
8 whatever else he was going to use. He also had scales when he
9 left that day. That's all from the testimony of Ms. Wyche.

10 She specifically knew what her husband was planning on
11 doing because she overheard phone conversations in which Darryl
12 Wyche talked about getting together with Bo, and it was Bo from
13 Randallstown, according to Ms. Wyche's testimony.

14 Damita Green testifies, frankly, to similar plans.
15 Later on in the day, after Mr. Wyche had been involved, according
16 to the testimony of Dwayne Denham, in meeting up with a possible
17 drug transaction in DC, and also earlier in the day they spent
18 some time at Brandy's house. Mr. Wyche's brother, Anthony, who
19 went by the name Pete, is also there during the same time. They
20 hang out for a while. Dwayne Denham is there, Deeze, the Wyche
21 brothers, Ms. Damita Green and some other people.

22 She overhears Mr. Wyche on the phone planning to meet
23 Bo. And what were they going to do? Well, what Ms. Wyche
24 overhears, and this is in the grand jury transcript which by
25 stipulation has been brought in in this case, ladies and

1 gentlemen, the only thing we know about their plans is that when
2 Mr. Wyche said to Bo, Are you still trying to get that? Are you
3 still trying to get that? And then he gets off the phone and he
4 leaves with his brother.

5 At approximately the same time Dwayne Denham leaves.
6 Ms. Green does not know whether they went the same direction or
7 did anything. Mr. Denham confirms that they ultimately
8 separated.

9 So the only thing we know for certain about what was
10 going to happen that night is that Mr. Wyche was going to see Bo
11 that evening. That's what's very clear.

12 So what happens that night? How do things actually
13 play out?

14 There are phone calls between Mr. Mitchell and Mr.
15 Wyche throughout the evening consistent with the McCaffity
16 pattern that they're getting together. There are also calls
17 between Mr. Mitchell and his crew, Mr. Martin and Mr. Harris, in
18 between Mr. Martin and Mr. Gardner, consistent with Bo mobilizing
19 his crew.

20 Natasha Wyche expects her husband to be home, talks to
21 him sometime before midnight, and they have a conversation. She
22 wakes up later on, around about 12:30, the phone records specify,
23 and he's not home. She becomes worried. So she calls his cell
24 phone. And we actually see that call on the phone records and
25 summaries that have been put into evidence in this case.

1 Mr. Wyche does not pick up, but the phone does. And
2 Ms. Wyche hears what must have been terrifying for her, voices
3 talking about putting something in a reservoir. She becomes
4 scared at this point. She doesn't recognize any of those voices,
5 doesn't have an opportunity to hear any of them or to even make a
6 guess as to who they are because this is only over a few seconds
7 that she hears it. She testifies from memory and has no
8 recording to describe.

9 She spends the rest of the night calling hospitals and
10 calling police stations and ultimately becomes aware of the Irene
11 Magginson voice mail. Her mother receives a voice mail message
12 from Darryl Wyche's phone, apparently an accidental call. And
13 there are voices on that phone that leave a recording. It's very
14 clear that it's an accidental call. It's very clear that the
15 voices don't know they're being recorded. But that voice mail's
16 in evidence and you've heard it.

17 There was one thing that's absolutely clear in this
18 case is that the voices on that voice mail are the voices of the
19 killers of Darryl Wyche and Anthony Wyche. That much is obvious.
20 This is Darryl Wyche's phone. We hear language about buc buc
21 buc. We hear language about sounds. We hear laughter. We hear
22 about going through pockets. We hear someone has a pair of
23 scales.

24 It's very clear that this is the voice of the killers.
25 The witnesses in this case that have testified have identified

1 those voices, the voice of Mr. Mitchell, who's been identified by
2 several witnesses, with the exception of his girlfriend, Jaquetta
3 Smith. Mr. Martin is also identified. Mr. Harris is also
4 identified by different witnesses. Generally, the witnesses who
5 knew people the best were able to identify and in the best
6 position to identify those voices.

7 Now, what is the crime scene? What does the Wyche
8 crime scene look like that day? It's virtually identical to the
9 McCaffity crime scene, first of all. That's one thing that's
10 obvious from go.

11 Two human beings shot dead in a car in what would have
12 been an isolated place in the middle of the night. And here,
13 ladies and gentlemen, is a photo of Wabash where the Wyche
14 vehicle was found. It's a light industrial area with
15 construction sites. It would have been utterly abandoned in the
16 middle of the night, 12:00, 12:30 time frame. Really from the
17 time the sun went down until the morning, no one's going to be
18 around here.

19 The shooter, once again, is sitting in the back seat,
20 fairly obvious, in fact, perfectly obvious, from the positions of
21 the bodies and the bullet wounds. And it's totally consistent
22 with the McCaffity crime; that this was a killer sitting in the
23 back seat. And when you consider the location and the fact that
24 the killer was able to get in, once again, the Wyche crime is a
25 trap, just like the McCaffity crime. Identical.

1 Once again, however, we're faced with the problem of
2 who set the trap. That's the real issue.

3 In terms of assessing motivations, one thing that
4 becomes relevant is this is an incomplete robbery attempt when
5 you consider what's found in the car with Natasha Wyche's
6 testimony and Dwayne Denham's. Both of them testified to
7 packages of narcotics. We know that the Wyche brothers had a
8 quantity of narcotics or Darryl Wyche had a quantity of narcotics
9 and money that day. \$23,000, according to his wife, Natasha.

10 Some money and some drugs are found in the car, but not
11 as much as we would expect to find, according to the testimony of
12 the witnesses. This tells us what the motivation is, which was
13 to rob Mr. Wyche, killing his brother as a witness, of any money
14 and drugs that were easily recovered. But we also know that
15 whoever carried out this crime didn't know Darryl Wyche well
16 enough to know, A, how many drugs he had, how much money he had,
17 or where his hiding places were. But it was a robbery, albeit an
18 incomplete one.

19 It's also clear from forensics that a .40 caliber
20 weapon is used to commit this murder. Projectiles are found in
21 the front, the bodies, and shell casings are found on the floor
22 in the rear, all confirmed to be .40 caliber weapons.

23 How do we know that this is the work of the defendants?
24 Well, it's the same MO as the McCaffity murder. Mr. Wyche was a
25 drug associate of Mr. Mitchell, Mr. Gardner and Mr. Martin, as

1 we've seen from all the testimony in this case. Mr. Wyche was
2 supposed to see Bo that night, according to the testimony of the
3 people who knew his plans that well. And as we will see a little
4 later, there is forensic evidence, firearms identification
5 evidence linking the firearms used in the Wyche crime to the
6 Spence crime by way of the Lee murder. In other words, there's a
7 commonality of weapons being used within these various cases,
8 which is important evidence of conspiracy.

9 Beginning with the phone analysis. If I can spend just
10 a moment doing this one more time.

11 THE COURT: Whenever you get to a good point, Mr.
12 Hanlon, we can break for lunch.

13 MR. HANLON: Certainly, Your Honor. I'll move through
14 this.

15 THE COURT: Fine.

16 MR. HANLON: We'll still be in the middle of Wyche.

17 THE COURT: Whatever you choose. Sure.

18 MR. HANLON: Hopefully, that's fairly visible to you,
19 ladies and gentlemen. I'm not spending too much time on this
20 and, of course, now I'm aware that I'm the only thing separating
21 you from your lunch so I'm not going to spend too much time.

22 We see a pattern of phone contacts here that's very
23 consistent with what we saw in the McCaffity crime. We see these
24 various phones. On the subject of the phones, ladies and
25 gentlemen, in terms of how they're identified as the defendants,

1 well, you heard Special Agent Benson testify about that. I don't
2 want to get too much into it. But it's a combination of phone
3 usage, it's a combination of finding defendants listed by names
4 in the phones of associates. Sometimes they're listed to
5 residences connected with the defendants. But persuasive
6 evidence has been presented in this case that the phones
7 identified as Mr. Mitchell's, as Mr. Martin's, as Mr. Harris's
8 and Mr. Gardner's phones are those defendants.

9 In essence, the pattern we see here is that Mr. Wyche
10 is talking to Mr. Mitchell. That's what it boils down to.
11 They're in contact with one another, consistent with plans to
12 meet.

13 And at precisely the same time, we have Mr. Mitchell in
14 contact with his whole crew, Mr. Harris and Mr. Martin, and Mr.
15 Martin is in contact with Mr. Gardner. So you have Wyche and
16 Mitchell on one side and Mr. Mitchell and everybody on the other.

17 Now, put yourself in the position of Darryl Wyche.
18 You're getting ready to meet Bo Mitchell that night to do a drug
19 deal in an abandoned area of Baltimore City. Are you going to be
20 comfortable if you know that he's on the phone all night with
21 Shelton Harris, Mr. Martin, and indirectly, Mr. Gardner? Most
22 people wouldn't be. Because it's a trap, ladies and gentlemen,
23 just like we see with the McCaffity crime. It is a trap. And
24 how the trap is laid is something I'll talk to you about after
25 lunch.

1 THE COURT: Members of the jury, continue to keep an
2 open mind about all issues. Continue to adhere to my
3 instructions. Have no discussion about the case or any of the
4 arguments you've heard so far. It is approximately 12:55. I'll
5 ask you to be back in the jury room, prepared to proceed, by 2
6 p.m. The jury's excused for luncheon recess until 2 p.m. Please
7 leave your note pads on your chairs.

8 (Jury exits the courtroom.)

9 THE COURT: All right. We're in recess until two p.m.

10 (Luncheon Recess at 12:53 p.m.)

11 (Defendants present in the courtroom.)

12 THE COURT: Mr. Coburn.

13 MR. COBURN: Thank you, Your Honor. I've just got a
14 little thing. I was wondering if it would be okay for the
15 government to e-mail us a copy of the Power Point that they're
16 using during the course of their closing.

17 THE COURT: He printed out copies.

18 MR. COBURN: We're hoping to have it on the computer
19 because we were --

20 THE COURT: Well, I think that's a request that should
21 go to Mr. Hanlon. I directed him to print out copies for you.

22 MR. COBURN: The question, and I don't mean to take up
23 more than a nanosecond of the Court's time with this, but the
24 question really has to do with whether we can refer to it in our
25 closing. It's easier to do that if we've got it on the computer.

1 Because, I mean, they're using so it seems like we ought to be
2 able to use it.

3 THE COURT: What about copyright law?

4 MR. COBURN: You know, it's funny Your Honor should say
5 that, because when I mentioned it to Mr. Hanlon, he referred to
6 work product, which I'm not too sure that work product would
7 apply to it since it's on the presenter.

8 MR. HANLON: Your Honor, the issue is whether or not
9 something we've created as a demonstrative for ourselves ought to
10 be emailed and turned into some sort of --

11 THE COURT: I'm not going to order you. You don't have
12 to defend yourself. Ms. Rhodes, like Mr. Kurland with his dual
13 sovereignty, I find it, you've pushed me to an obsessiveness over
14 the rap expert to a point where it's difficult for me to think
15 clearly any more. But I do want to say to you, it occurred to
16 me, I think the closest analog, as I thought about it, was what
17 you really tried to use him for, when you get right down to it,
18 is one of these experts on voluntary confessions.

19 If you think about it, you know, that's, I'm sure
20 you're aware there's sort of a movement, particularly in light of
21 some of the exonerations, where in certain cases defense counsel
22 seek the admission of psychologists and psychiatrists to testify
23 about why people confess to crimes they didn't commit.

24 And that's kind of what you were trying to do here
25 because, in fact, the Court treated the lyrics as an admission, a

1 confession. And in effect what you wanted Mr. Cook to come in
2 and say, well, the jury shouldn't credit those as true or
3 accurate confessions because, based on my training and
4 experience, I know that lots of rap artists write a lot of really
5 raunchy, profane, vulgar, horrible lyrics that aren't true.

6 And I'm not saying I would never admit a psychiatrist
7 in an appropriate case, although I think the federal circuits are
8 largely uniform that that kind of evidence isn't admissible. I
9 know a number of state courts have admitted it.

10 But that's really, that's the round hole you were
11 trying to squeeze that peg into, that square peg into.

12 MS. RHODES: I haven't thought of it like that. So you
13 are going to change your decision?

14 THE COURT: No. But I'm going to remain obsessed over
15 the issue.

16 MS. RHODES: That's odd.

17 MR. MARTIN: I thought you were going to make an
18 announcement.

19 THE COURT: Now Mr. Kurland's got to come and defend
20 his --

21 MR. MARTIN: I thought you were going to make an
22 announcement.

23 MR. KURLAND: It's nothing about dual sovereignty.
24 Your Honor, before the morning Mr. Hanlon made some minor changes
25 to the presentation, so the documents we have aren't exactly

1 accurate. I hope that nothing that Mr. Coburn said is going to
2 make him change his mind, because he was going to give me a copy,
3 a printout copy of the --

4 MR. HANLON: That's fine, Your Honor.

5 MR. KURLAND: -- of the proper one. I just wanted to
6 make sure that was still in place.

7 THE COURT: All right. The report that I've received
8 is that the remote transmission is working perfectly well and all
9 is well. So we'll have the jury.

10 Just so you know, Mr. Hanlon, by my estimate you went
11 roughly an hour and 25 minutes or so.

12 MR. HANLON: That's fine, Your Honor. And I get to
13 start over now that the lunch break's ended, right?

14 (Jury enters the courtroom.)

15 THE COURT: Good afternoon, ladies and gentlemen.
16 We're ready to proceed. Mr. Hanlon, whenever you're ready.

17 MR. HANLON: Thank you, Your Honor. Ladies and
18 gentlemen, good afternoon. One of the advantages of having your
19 closing, one of the advantages of having your closing arguments
20 broken up by the lunch break is you have an opportunity to go
21 back and check over things. And I do have --

22 THE COURT: I think -- I'm sorry, Mr. Hanlon. I think
23 you're going to need to raise the mike just a bit. Okay. Let's
24 try that.

25 MR. HANLON: Is that good, Your Honor?

1 THE COURT: It is on, yes? May be a battery problem.

2 Thank you, Ms. Arrington.

3 MR. HANLON: Okay. Again, good afternoon. One of the
4 advantages of a lunch break is that you have a chance to go over
5 your materials. And there are a couple of errors, which as long
6 as we're regrouping, I do want to correct.

7 While we were discussing some of the drug weight, Your
8 Honor, ladies and gentlemen, you'll recollect that one of my
9 colleagues on the defense side, Mr. Pyne, lodged an objection
10 about the quantity I had described for the January 9th, 1997
11 count. And he's absolutely correct. It wasn't 70-something
12 grams. It was 5.3 grams of cocaine. I'd accidentally included
13 the weight of the packaging material.

14 So Mr. Pyne was absolutely correct about that. And I
15 apologize for that mistake.

16 Something else to cover. In the search of Amity
17 Street, originally it was a figure of over 300 or 350 grams of
18 crack cocaine. It's actually more than 80. It was 80-some grams
19 of crack. I basically missed a decimal point in terms of one of
20 the small quantities.

21 Now, my mistakes, fortunately, do not supersede the
22 government's stipulation in this case with the defendants. That
23 lets out, sets out all of the quantities in this case. This
24 controls. My mistakes do not. And I apologize, ladies and
25 gentlemen, for that. But it's fortunate that I had a chance to

1 correct that.

2 One other thing, which is a pure typo, is in the
3 description of the firearm evidence from the McCaffity murder, I
4 believe that my little Power Point presentation here makes a
5 reference to a .380 caliber charge originally. I went ahead and
6 corrected it. It was actually a .38, .357 caliber weapon firearm
7 that was used based on the recovery of some bullet fragments from
8 the car.

9 So a couple mistakes. I bet there are others that were
10 made that I managed to correct. I'm sure there's probably some
11 other stuff buried inside this Power Point some place. I
12 apologize for that.

13 So with all that said, let's flip up to where we were
14 before we broke for lunch. We talked about the phone
15 communications between Mr. Mitchell and Mr. Wyche, and also Mr.
16 Mitchell and the rest of the crew, leading up to the meeting with
17 Mr. Wyche and ultimately the murder of Darryl Wyche and Anthony
18 Wyche in March, 2002. It was a trap, ladies and gentlemen.

19 The evidence pointing to the people who laid the trap
20 are the defendants in our case. All four of them, Willie
21 Mitchell, Shelly Wayne Martin, Shelton Harris and Shawn Gardner
22 are charged as defendants in the Wyche counts and the evidence
23 proves beyond any reasonable doubt that they conspired and acted
24 together to carry out that murder.

25 Now, let's talk about the evidence a little bit

1 individually as to the defendants. We've talked about the
2 conspiracy evidence. Let's talk about the defendants
3 individually, beginning with Mr. Mitchell himself.

4 He has a relationship with Wyche, with Mr. Wyche that
5 is consistent with the motivation that we've seen typical of this
6 group. There was a drug relationship there going back years.
7 Mr. Mitchell would have known that Mr. Wyche would be an
8 appropriate drug target for a robbery conspiracy that does
9 robberies of drug dealers. This was Mr. Mitchell's business,
10 after all. We see that in the McCaffity case, which was not as
11 purely a drug-driven conspiracy. But the MO is absolutely
12 precisely the same between the McCaffity crime and the Wyche
13 crime. So clearly, the fingerprints of a person who would carry
14 out a Wyche robbery in this way are seen on the McCaffity case.

15 We know from Natasha Wyche's testimony and Damita
16 Green's testimony what Darryl Wyche's plans were that night. It
17 was to see Bo. And the circumstances demonstrate that it was to
18 do a drug deal with Mr. Mitchell. That's what Darryl Wyche
19 thought he was going to do that evening. The evidence is
20 absolutely plain about that.

21 In the week or so following the Wyche murder, Mr.
22 Mitchell evidently felt the need to arm himself. He had a weapon
23 in his car while he was driving to the Wyche funeral on April 1st
24 of 2002. This weapon was a 9 millimeter weapon, a Larkin, if
25 memory serves, that was found in the car. The mother of his

1 children, Jaquetta Smith, was with him at the time of his arrest.
2 And the circumstances under which Mr. Mitchell got that gun are
3 also very significant.

4 Recall the testimony of Rodney Hayes. How did Mr.
5 Mitchell come into possession of a 9 millimeter Larkin during
6 that time frame? Well, he traded it. He traded it for a gun
7 that, that he had that had been in Mr. Hayes's possession. Mr.
8 Hayes testified that he had the 9 millimeter gun, that it was
9 taken by TM and exchanged to Mr. Mitchell because Mr. Mitchell
10 wanted to get rid of a .40 caliber firearm.

11 Why did Mr. Mitchell want to get rid of this? There
12 was testimony from Mr. Hayes about that. Mr. Mitchell wanted to
13 get rid of that gun because it was dirty. And Mr. Hayes's
14 understanding of that? It would be dirty if it was used to shoot
15 someone.

16 This is all in the wake, ladies and gentlemen, the
17 evidence shows, all in the wake of the Wyche murder because it
18 was in that time frame, just a week later, that Mr. Mitchell was
19 arrested with this 9 millimeter which, as he testified, it was a
20 matter of great irritation to Rodney Hayes because he ended up
21 losing a 9 millimeter gun that was his and he's stuck with a
22 dirty .40 caliber firearm. So this is a question of great
23 irritation for Mr. Hayes.

24 And it is powerful evidence, powerful evidence of Mr.
25 Mitchell's involvement in the Wyche murder. He's trying to get

1 rid of a .40 caliber. And we know from forensics that a .40
2 caliber weapon was used to kill the Wyche brothers.

3 Now, Mr. Mitchell confirms a great deal of this to his
4 police, to his interview with the police. There was testimony
5 about this from detectives who informed Mr. Mitchell of his
6 Miranda rights a few weeks after his arrest in April of 2002.
7 Mr. Mitchell's attempt during this statement is to give a
8 statement that makes him look innocent. He doesn't admit to a
9 murder. He doesn't confess. But he does corroborate and confirm
10 a great deal of the government's case. He wouldn't have liked
11 doing it but he had to because he was in a position on that day,
12 Mr. Mitchell was, having been arrested earlier, and having had
13 his cell phone taken, he knew that the police would know about
14 the cell phone contacts between him and Darryl Wyche on the night
15 of the murder. So any alibi plan, any idea Mr. Mitchell might
16 have had to suggest that there was no contact was out the window.

17 So he gives a statement that is designed to admit to
18 the communications, to explain away the phone calls, while still
19 making him look innocent. What he says is that he got, he had
20 been planning to, he had been talking to Darryl Wyche that day
21 and he was trying to set up a meeting between Mr. Wyche and a
22 drug dealer named L. That's Mr. Mitchell's story to the police.

23 Now, let's look at that story. It is really
24 approaching a false alibi, particularly when you consider that
25 Mr. Mitchell sort of conjoined this explanation with the idea,

1 and this is two or three weeks after the Wyche murder, closer to
2 three weeks, maybe more, Mr. Mitchell's able to remember that he
3 even saw a movie the night of that murder. He remembered a Rick
4 Fox movie. Two or three weeks later, he's able to remember a
5 movie he saw on television that night.

6 And he has absolutely no information whatsoever with
7 respect to this drug dealer named L. No description, no
8 information, nothing that's going to put the police in a position
9 to really seek this person.

10 There's been loads of testimony in this case about drug
11 dealers, and about the names, about where they go, and where they
12 can be located and this kind of stuff. But there's absolutely no
13 evidence whatsoever that L even exists, much less that Mr.
14 Mitchell had any relationship with L.

15 The fact of the matter is is that Mr. Mitchell was
16 telling a story that night, a story, a false one, that he had to
17 tell in order to explain his communications with the Wyche
18 brothers or with Darryl Wyche, while at the same time making him
19 look innocent. And it's a story ultimately that fails because it
20 does not make any sense.

21 Number one, it's built on this somewhat unbelievable
22 notion that he would be able to remember a Rick Fox movie weeks
23 and weeks later when asked by the police where he was.

24 Now, that the Rick Fox movie was on appears clear.
25 There was a TV Guide page put into evidence yesterday. It's a

1 Rick Fox movie that started at 1:30 a.m. And if you check the
2 records, ladies and gentlemen, it was an hour and a half movie.
3 It was on Stars, according to TV Guide, which is a cable station.
4 And I don't believe another movie was on until about 3:00 a.m.,
5 which means that Mr. Mitchell had all the time in the world to
6 get home, see part of the Rick Fox movie, and then hence
7 construct his alibi.

8 It is notable in looking at the concerted action of
9 this group that all of the defendants in this case who provide
10 alibi defenses revolve that alibi defense around a movie that
11 they're able to remember weeks later. But that's another point.

12 The problem with Mr. Mitchell's statement is that it's
13 simply not credible. He provides no information about L.
14 There's no evidence L exists. And it really doesn't make a whole
15 lot of sense when you think about it. Why would Mr. Mitchell, a
16 drug trafficker in his own right -- and if there's one thing
17 that's clear in this case, it's that Mr. Mitchell had a drug
18 distribution relationship with Darryl Wyche.

19 Darryl Wyche sold to Mr. Mitchell. That is what the
20 plan was that day. They'd done business together in
21 Pennsylvania. They did business together at the Bryant grocery.
22 They did business together for years.

23 Why is Mr. Mitchell going to put his supplier together
24 with somebody else to do a transaction? He's cutting himself out
25 of the business. That doesn't make any sense.

1 It really is simply, there's nothing to Mr. Mitchell's
2 story except that it backs up a great deal of the government's
3 analysis and, in a case in which there's been all of this
4 discussion about whether this is a voice mail, whether this is a
5 connected call, and what are the durations and how does it fit
6 together, Mr. Mitchell admits, and he has to admit, that he was
7 in communication by phone that night with Darryl Wyche. That's
8 what he told the police. The only issue is what were they
9 talking about?

10 And when you look at the phone records, there's no
11 mysterious drug dealer named L on the other side of those phone
12 records. It's Mr. Mitchell's crew, the defendants in this case,
13 who are being mobilized, who are being brought together, and are
14 being alerted all night long.

15 And the fact of the matter is, is that Mr. Wyche didn't
16 meet that night to do a drug deal with a mysterious figure named
17 L. He was assassinated that night, along with his brother. Mr.
18 Mitchell's story does not make any sense. What Mr. Mitchell's
19 story does ultimately do is corroborate that this was a trap.

20 Now, the defense has done a great deal in this case to
21 try to pin the case on Dwayne Denham. And he's certainly a
22 logical and a tempting figure for a defense target in this case.
23 He is, after all, a drug dealer who specializes in, essentially,
24 being a bodyguard for Darryl Wyche. He testified in this case.
25 And of course his testimony plainly rejects the theory that he

1 was involved in any way in this murder conspiracy. Nevertheless,
2 the defense has continued to point to him because he was one of
3 the last people to be with the Wyche brothers that night. Damita
4 Green saw them together. So he's a logical choice.

5 Here are the problems with the Dwayne Denham theory,
6 and ultimately it fails completely.

7 Number one, why is Dwayne Denham suddenly going to
8 execute a person he's done profitable business with for years?
9 Someone who's family he knows. Someone who's family he's still
10 close with. He get along and had a great thing going with Darryl
11 Wyche. Why suddenly call to an end? There's no real explanation
12 for that.

13 Mr. Mitchell's decision to eliminate Mr. Wyche, on the
14 other hand, appears to be consistent with the direction that this
15 conspiracy had taken at the time, following up on the McCaffity
16 murder and continuing on to do robberies as a means of really
17 expanding the group's monetary and drug supply. There's no
18 evidence that Mr. Denham was involved in anything like that or
19 that he had taken any kind of turn that way.

20 The other problem with the Denham theory is that if
21 he's going to kill Darryl Wyche, why wouldn't he do it at a time
22 when they can be alone, instead of spending the entire day with
23 them, waiting until his brother's around, and then doing it?
24 Somehow luring them out on to Wabash Avenue in a way that's
25 unexplained and then killing them while they're together, when he

1 would have had loads of opportunities to do it when they were by
2 themselves and then he could have carried out the robbery.

3 If Dwayne Denham's going to kill Darryl Wyche, why in
4 the world would he do it on a night when half the world at
5 Brandy's house, including Damita Green, sees them together? When
6 Mr. Wyche is on the phone with his wife half the evening, talking
7 to his wife, and making it perfectly clear that Dwayne Denham
8 would have been there? Mr. Denham is not going to kill somebody
9 when everyone in the world knows they're together. And everyone
10 in the world did know they were together, which is why he's such
11 an easy target for the defense. It doesn't make any sense.

12 Finally, if Dwayne Denham's going to kill Darryl Wyche,
13 what's he doing leaving \$5,000 in drugs in the wheel bay of the
14 car, in a hidden compartment? There was a substantial amount of
15 loot in that car. Someone who knew the Wyche business as well as
16 Dwayne Denham did isn't going to leave that stuff there. Doesn't
17 make any sense.

18 At the end of the day, there is no evidence suggesting
19 that Mr. Denham, Deeze, was involved in the murder. Zero. There
20 is loads of evidence, including phone records, circumstantial
21 evidence, the motivations, and the voice mail, which I'm coming
22 to, which shows Mr. Mitchell's involvement and the involvement of
23 his crew.

24 And on the subject of the voice mail, you heard Natasha
25 Wyche's testimony in this case. She's listened to the voice

1 mail. She identifies voices on that tape. She does not identify
2 Dwayne Denham, and she's known him for years. This is a woman
3 who is not going to do anything to protect the man who killed her
4 husband. She does not identify Dwayne Denham, and she testified,
5 I would recognize his voice.

6 Mr. Denham was not involved in this. Deezo had nothing
7 to do with it. It was Mr. Mitchell and the defendants in this
8 case.

9 Now, on the subject of the recording. Mr. Mitchell's
10 voice is identified by witnesses. To be sure, the witnesses who
11 identify voices on that recording, none of them are 100% sure,
12 not by any stretch of the imagination. They've listened to the
13 tape. They do their best. They testified and explained why they
14 made certain identifications. But the fact of the matter is is
15 that there are certain identifications which are credible if you
16 consider them in light of all the evidence.

17 Natasha Wyche and Rodney Hayes have no problem
18 identifying Mr. Mitchell's voice on that tape. And the fact that
19 Mr. Mitchell's voice is on that tape is not only backed up by
20 those witnesses and by the other evidence in this case, but it's
21 consistent with the phone records here.

22 Remember Mr., at the very end of the phone analysis
23 that Detective Benson did in this case, I don't want to toggle
24 with the DOAR again, but the very last call right here is a call
25 from Mr. Mitchell to Mr. Harris's home at a time corresponding to

1 that call. And yes, we're dealing with different phone companies
2 and different phone company records. But the times do match up.
3 They are corresponding. They are consistent.

4 At the time of that call, which is approximately 12:44
5 a.m., according to Mr. Mitchell's records, we hear a voice on the
6 voice mail from Ms. Magginson's voice mail saying what? I'm
7 calling your house, Shorty. I'm calling your house, Shorty.

8 Every witness that has testified from that stand,
9 including the law enforcement witnesses in this case that have
10 analyzed this voice mail have testified that they are hearing is
11 that is, I'm calling your house, Shorty. That's what the
12 witnesses have heard in this case. And it is consistent and
13 logical with the phone records, which show at that precise moment
14 a call from Mr. Mitchell to his hit man's house, Mr. Harris.

15 That supports not only that Mr. Mitchell was on that
16 tape and, hence, one of the killers or one of the members of this
17 conspiracy to kill, but also that Mr. Harris was. Powerful
18 evidence showing Mr. Mitchell's involvement in carrying out of
19 this crime.

20 Now, let's turn to Mr. Harris on the subject of the
21 voice mail. Again, already identified inferentially because the,
22 I'm calling your house, Shorty, corresponds exactly with a call
23 to Mr. Harris's home. Number one, Mr. Harris is Bo's man, Bo's
24 hit man. We've already seen that in the McCaffity crime.

25 We've already discussed the matching MO between the

1 McCaffity crime and the Wyche crime. They are identical. That
2 they were carried out by the same group seems apparent from the
3 case itself. We know from Mr. Dobropolski's testimony that Mr.
4 Mitchell confirmed, during their recruitment efforts for Mr.
5 Dobropolski, that he and Mr. Harris put in work and talked about
6 putting in work together. We see similar language from Rodney
7 Hayes in connection with Mr. Harris's attempt, Mr. Mitchell's
8 attempt -- excuse me -- to ditch that dirty .40 caliber.

9 I've already talked about the voice mail connection --
10 Mr. Mitchell calling Harris's house at precisely the moment of
11 the murder.

12 Buc, buc, buc. One of the voices on the tape reads,
13 buc, buc, buc. Obvious imitation of a gun. Evidently mocking
14 and celebrating the fact that the Wyche brothers had just been
15 murdered. Buc, buc, buc is also heard on Mr. Harris's lyrics.
16 He uses that term as a description, an imitation for firearms.

17 And Jaquetta Smith, who is Mr. Mitchell's girlfriend,
18 who certainly did not identify him, did identify Mr. Harris on
19 that tape. She wasn't willing to walk away from that.

20 Finally, ladies and gentlemen, of course, Mr. Harris's
21 writings once again bring us back to the celebration of all of
22 these crimes in those raps which were recovered from Mr. Harris's
23 house in 2004. Raps about putting bullets in people's brains.
24 Raps about putting a Ruger to your nozzle and taking all your
25 shit. Raps about running up on the left side of a car. All of

1 these things celebrate exactly the kind of crime we see in the
2 McCafferty case and exactly the kind of crime we see here in the
3 Wyche case.

4 Mr. Harris did us the courtesy of writing and singing
5 about it. And there's been a lot of debate about how rap music
6 is written and where it comes from. Whether this is rap, science
7 fiction, '80s pop, whatever, this is true because it's
8 corroborated and matches up with the evidence in this case.

9 Let's talk about Claudus Lassiter for a moment. This
10 is another piece of evidence linking Mr. Mitchell and Mr. Harris
11 to the Wyche murder by virtue of the aftermath of that crime.

12 Claudus Lassiter becomes known to the group that he's
13 putting people's names in it, partly because of the voice mail,
14 for whatever other reason. You heard testimony from Mr. Hayes
15 that Mr. Mitchell sends a letter to TM, that's Mark Herbert, who
16 goes by the name Tony Montana, who was instructed to turn the
17 letter on to Harris. He was apparently trustworthy enough to Mr.
18 Mitchell to be a conduit.

19 Mr. Mitchell's instructions to Mr. Harris in this
20 letter are to kill Claudus Lassiter. That testimony was from
21 Rodney Hayes. Mr. Hayes has no reason to make this up, ladies
22 and gentlemen. And his testimony is consistent and matched up
23 with the testimony of Darryl Bacon, who described that during
24 approximately the same time frame, Mr. Gardner and Mr. Martin
25 were also talking about Claudus Lassiter and expressing a

1 concern.

2 Mr. Mitchell and Mr. Harris's discussion and ultimately
3 Mr. Harris's invitation to, Mr. Mitchell's invitation to Shelton
4 Harris to kill Claudus Lassiter is again powerful evidence of the
5 fact that they were party to this conspiracy and that this was
6 their clean-up. This was more protection. Of course, Mr. Harris
7 was more than interested in doing it because he gets in an
8 argument with Mr. Hayes later on because he needs to get a gun to
9 actually carry it out.

10 The Claudus Lassiter discussion, it never develops and
11 materializes into anything because Mr. Hayes intercepts and,
12 frankly, doesn't want anything to do with it, links the
13 defendants to this case.

14 Now, let's talk about Tony Montana for a minute, Mark
15 Herbert, who testified a couple days ago, if memory serves. Mark
16 Herbert is his name. He goes by TM or Tony Montana. He's member
17 of the Shakedown group. He's been involved in some of the
18 singing and he talked about. He testified about that experience,
19 and also denied any of this Claudus Lassiter business.

20 Let's look at his testimony for a minute. One thing
21 really becomes, well, three things become very, very obvious
22 about Mr. Herbert from his testimony. And I say this all mindful
23 of the fact he was kind of an entertaining guy. He said some
24 funny things. His response to whether or not his sister and Mr.
25 Mitchell had dated was kind of humorous. He's a funny guy. But

1 there are three things that are very apparent about it.

2 Number one, he's loyal to his friends, very loyal to
3 his friends. This is a man that values loyalty. In fact, he's
4 been taught the lessons of disloyalty more so than most people
5 can say because his name has been put out there in the Stop
6 Snitching Two video. So this is a guy who has been taught the
7 lesson of how dangerous it can be to even be, even look like a
8 government witness. If you even get subpoenaed, if you even show
9 up, your name's going to be out there. Your name's going to be
10 put in a tape and it's going to be put out on the street so the
11 whole world knows, forgive the term, you're a rat or a snitch.
12 This is a guy who knows the price for disloyalty. And we know he
13 honors loyalty.

14 He has a tattoo on his body that talks about honor
15 above all or death before dishonor. I might be misquoting it.
16 And we see similar themes in the lyrics.

17 Now, there's nothing wrong about loyalty to one's
18 friends and one's family. But when you consider the context of
19 the words in that lyric, death before dishonor, never talk to
20 Homicide, and you consider Mr. Herbert's relationships with these
21 friends, loyalty takes on a very specific meaning. It means
22 don't talk.

23 Number two. Mr. Herbert is not consistent in terms of
24 his explanation. He at one point talks about never receiving a
25 letter, doesn't know anything about it. Another time he talked

1 about, we got a letter but he handed it straight over to Mr.
2 Harris. He's a little bit inconsistent in terms of his
3 explanations.

4 Thirdly and finally, it's painfully obvious that if
5 there's one code that Mr. Herbert lives by, he does not
6 incriminate himself. Above all things. Remember, he testified
7 about his own drug dealing history. He's been arrested,
8 convicted twice of drug dealing. One of them involved a case
9 where he ran away from the police and actually ran into a house
10 and was hiding from the police.

11 Now, before he was asked about those two specific
12 arrests, he testified about how he was a drug dealer and he would
13 go out on the street and sometimes some of the other people were
14 there that we've heard about. And how would you get your drugs?
15 Well, I would steal my drugs sometimes or I would do whatever.

16 It was very clear from his testimony that there was a
17 pattern, there was a history. He was a drug dealer. He was out
18 there in the game, as they say.

19 But when reminded about the problem of incrimination,
20 all of a sudden Mr. Herbert said, well, yeah, I'm a drug dealer,
21 I've done it twice and I've been arrested twice, and those are
22 the only times in my life I've ever dealt drugs. Preposterous.
23 Preposterous. It's inconsistent with his own testimony earlier
24 on and it doesn't make sense. Mr. Herbert's not going to
25 incriminate himself. And talking about guns and hits and Claudus

1 Lassiter would incriminate this man.

2 He was not truthful from the stand about his drug
3 trafficking activity and ultimately he's not truthful about what
4 Mr. Hayes described. Mr. Hayes, who has no motivation to lie
5 here, was very clear about what happened and about the plan to
6 kill Claudus Lassiter. And he's corroborated on this point by
7 Darryl Bacon.

8 How about Mr. Martin? What's the evidence linking him
9 to the crime? Once again, basic background. He has a
10 relationship with Mr. Wyche. He's on the phone calls. He's one
11 of the people being called all night by Mr. Mitchell, consistent
12 with a set-up.

13 A lot of discussion here, ladies and gentlemen, was
14 this a connected call? Was this a voice mail? I think counsel
15 and Detective Benson were going at it for a while about the 12:07
16 or 12:08 call. Ladies and gentlemen, they were talking to each
17 other that night. Whether it was a connected call or a voice
18 mail or whatever, the documents strongly suggest a connected
19 call. But even if it was a voice mail, they were clearly in
20 touch.

21 And we know Mr. Martin was in touch with Mr. Gardner.
22 Mr. Martin's voice is identified by Dwayne Denham. He's not 100%
23 sure about that, Mr. Denham was. But that was the identification
24 he made.

25 And that's all fine. But what is the other, more

1 powerful evidence identifying Mr. Martin to this case? Shit,
2 Wayne. Shit, Wayne. His voice is on the tape because someone is
3 talking to him in that car. Shit, Wayne. His friends are
4 talking to him. They're upset about, gosh, we shouldn't have
5 talked about the pockets or, boy, this was a heck of a thing we
6 just did. I am obviously paraphrasing. Shit, Wayne. Proof
7 positive of Mr. Martin's presence in that vehicle because they're
8 referring to him by name.

9 Terrible luck for Mr. Martin. Terrible luck, given all
10 the efforts he made to concoct an alibi. But ultimately, the
11 proof that he was there. When you consider it with the evidence,
12 with the codefendants, the phone call information and everything
13 else, the voice of the killers is on that tape. Mr. Martin is a
14 member of the conspiracy and the reference to "shit, Wayne"
15 proves it.

16 Let's talk about the alibi for a minute. Mr. Martin
17 does have an alibi defense here. He has his girlfriend, Lakeisha
18 McCoy, come in to testify that they were at the movies together.
19 He produces a movie ticket and a credit card receipt indicating
20 that he did pay, I'm not sure how much money, \$8 or \$16, I can't
21 remember if it was one ticket or two, to see Blade Two on the
22 evening of March 24th of 2002.

23 Let's look at the alibi carefully. First of all, a
24 couple of obvious points. The movie times don't necessarily help
25 Mr. Martin because the movie started and ended with, in a way

1 that would have given him plenty of time to get from the theater
2 to wherever he needs to go. Let's consider really whether or not
3 Mr. Martin was at the movies that day.

4 I'm sure he went and bought a ticket. He has some
5 documents to prove that. But whether or not he went to the
6 movies, ultimately, the evidence in this case says no. For
7 starters, as with Mr. Mitchell, the notion that Mr. Martin on
8 demand was able to provide detailed information and documents
9 about where he had been at 10:00 on March 24th, 2002 weeks and
10 months later is odd.

11 We go to the movies all the time, ladies and gentlemen.
12 Ask yourselves, do you have movie stubs that you would be able to
13 produce going back three or four or five weeks? Most people do
14 not.

15 Take a look at Mr. Martin's credit card, the one that
16 he used to pay the bill. Take a look at the statement which the
17 defense put into evidence. He appears to buy gas with it and
18 then in the course of a three or four week period, with the
19 exception of one gas station and one store, not sure what the
20 store was, his movie charge is the only use of that credit card
21 whatsoever. This is not a credit card that he uses regularly.
22 In fact, he appears to have gone out of his way to put on a
23 credit card a few bucks for a movie. And to insure and keep all
24 of the documents he would need, even so far as to be able to tell
25 his Mom when he was in jail, Go in my room, I have a movie stub.

1 That's odd, to say the least.

2 The other more fundamental problem with the alibi, of
3 course, is Mr. Mr. Martin's corroborating witness, Lakeisha
4 McCoy. If we are to believe her testimony -- and it was her
5 birthday. She's corroborated on that point. But otherwise, if
6 we're to believe her testimony, we would have to believe that on
7 her birthday, Ms. McCoy went out with Mr. Martin. They did not,
8 during the course of the entire evening, see a single person they
9 know. She evidently did not want to spend her birthday with any
10 of her friends or her family or anyone else. There was no party,
11 no get-together, no cocktails, no drinks. Instead, what she does
12 is she goes with Mr. Martin, spends the entire night with him,
13 sees no one else, and then goes to a movie which she apparently
14 fell asleep so soon into that she's never once been able to
15 provide a single shred of evidence about what the movie was
16 about. Not a single shred. She must have gone to sleep during
17 the, during the previews to have that little knowledge about this
18 film. And this was her birthday.

19 She's also been inconsistent on the single most
20 important piece of evidence about this alibi, and that's whether
21 or not she was present when the movie ticket was purchased. She
22 says in an affidavit, and she later says in a police interview or
23 in grand jury, two totally different things. One time she's
24 there, talks about it like she's right there where Mr. Martin
25 buys the ticket. Another time she's sitting in the car. It's

1 not consistent.

2 And she wasn't consistent in this case until she had
3 her memory refreshed on this incredibly important criminal alibi
4 defense, until she was actually shown the documents. And
5 ultimately doesn't really corroborate anything when you consider
6 the fact that she appears to have been asleep for most of the
7 important part of this case.

8 Ultimately, of course, the alibi collapses for two
9 other reasons in this case that Mr. Martin could not have
10 anticipated. Will Montgomery talks to Mr. Gardner after the
11 Wyche murder. They discuss everything that was going on, the
12 fact that Mr. Martin got in trouble. And Mr. Gardner gives Mr.
13 Montgomery some inside information about all of this.

14 Mr. Gardner tells Mr. Montgomery, who testified about
15 this, that part of the way they expected to get away with the
16 Wyche murder was that Mr. Martin was supposed to lay down a paper
17 trail. He was setting up an alibi for himself. Now, whether or
18 not this alibi was originally intended for all of the defendants
19 or one of the defendants and what all that was is not clear. But
20 Mr. Gardner confirmed to Mr. Montgomery that this was an attempt
21 to essentially establish a paper trail.

22 And that really makes sense with the evidence, when you
23 consider how odd all of this alibi business is. It was an
24 attempt to beat the charge by putting himself somewhere other
25 than the crime. And ultimately, the alibi fails, anyway. The

1 times don't work. Mr. Martin makes a phone call during the movie
2 with Mr. Gardner, during the movie, according to the times, is
3 talking to Mr. Gardner. I suppose that wouldn't have bothered
4 Ms. McCoy so much since she was apparently asleep.

5 And then most importantly, one thing Mr. Martin could
6 not possibly have anticipated -- shit, Wayne. That proves his
7 presence in the case and he couldn't possibly have known when he
8 laid out this alibi that he was going to be that unlucky. But
9 that ultimately disproves the alibi defense. We know he was
10 there because people were talking to him.

11 Finally, Shawn Gardner. Mr. Gardner and the evidence
12 linking him to this case. First of all, the obvious points. The
13 phone calls, his communications with Mr. Martin, his relationship
14 with Mr. Wyche. We've already gone over that with respect to the
15 other defendants.

16 The best evidence linking Mr. Gardner to this crime
17 personally, and bear in mind, ladies and gentlemen, under the law
18 of conspiracy, if you find that Mr. Gardner was a member of the
19 conspiracy, and this goes true for all of the defendants, if you
20 find that Mr. Gardner was a member of this ongoing conspiracy and
21 the crime was part of that conspiracy, he is still guilty of it.
22 Same for Mr. Martin, same for all of the defendants for all of
23 charges in which they are actually charged. So all of that is
24 part of the reason that Mr. Gardner's guilty for this case. But
25 let's actually look at the specific evidence.

1 The best information is that Mr. Gardner provides such
2 detailed insider information to William Montgomery that it does
3 prove that Mr. Gardner was a member of the planning and
4 preparation and carrying out of this case. Mr. Montgomery knew
5 from Mr. Gardner that the group was in trouble because someone
6 pressed a number on a phone, that Bo got them into trouble by
7 talking about pockets and going through pockets.

8 Mr. Gardner, as already mentioned, knew that Mr. Martin
9 had bought movie tickets in order to lay a paper trail for an
10 alibi. We know that Mr. Gardner, along with Mr. Martin, became
11 aware of Claudus Lassiter's information against them and was
12 warning Darryl Bacon.

13 And very importantly, ladies and gentlemen, Mr. Gardner
14 also gave a police interview on this subject, was also asked
15 questions about this case. He denied any involvement.

16 MR. KURLAND: Objection. There was no evidence of
17 that.

18 MR. HANLON: Your Honor, should I continue?

19 THE COURT: Let me think for a moment. I believe, Mr.
20 Kurland, my recollection is that Mr. Montgomery did go into this.
21 Is that --

22 MR. KURLAND: Could we have a side bar? That's not my
23 recollection, Your Honor.

24 THE COURT: I don't think we need a side bar. The
25 question is, obviously, we're trying to recall many weeks of

1 testimony. Obviously, if you're right, then Mr. Hanlon will
2 indicate that. Obviously, Mr. Montgomery did indeed testify to
3 conversations with Mr. Gardner. And I thought --

4 MR. HANLON: Your Honor, can I have a word with Mr.
5 Kurland?

6 THE COURT: Yeah. Why don't you speak to Mr. Kurland
7 for a moment?

8 (Pause in Proceedings.)

9 MR. HANLON: Thank you, Your Honor.

10 THE COURT: Either of you able to refresh the other's
11 recollection?

12 MR. HANLON: I think we're okay, Your Honor. Here's
13 what it boils down to, ladies and gentlemen.

14 THE COURT: Let me just say before you continue, Mr.
15 Hanlon. Obviously, I should state the obvious, ladies and
16 gentlemen. What I remember, what Mr. Hanlon remembers, what Mr.
17 Kurland remembers is of no consequence. It is what you remember
18 and recall about the evidence that will control your
19 deliberations. Go ahead, Mr. Hanlon.

20 MR. HANLON: Thank you, Your Honor. I think, again,
21 ladies and gentlemen, your deliberations control. But it was
22 part of the communications between Mr. Gardner and Mr. Montgomery
23 where this comes up.

24 Mr. Gardner had heard -- this is what he told Mr.
25 Montgomery. Didn't specify necessarily where he heard about it,

1 not necessarily for me to get into that. But he heard that the
2 police were saying or it had been reported that drugs had been
3 left in the car. Mr. Gardner's telling Montgomery. The police
4 are saying they left drugs, that they left drugs in the car. Mr.
5 Gardner did not believe that, according to what he told Mr.
6 Montgomery.

7 Mr. Gardner had an opinion about whether the police
8 were being truthful, and he did not believe them. That Mr.
9 Gardner would have had an opinion one way or the other, again, is
10 powerful evidence that he was involved in the crime. This was a
11 crime he was uninvolved in, he's not going to have an opinion
12 about whether drugs have been left in the car.

13 So with that clarification, thank you for giving us a
14 few moments.

15 Now, another point on the question of Mr. Gardner's
16 guilt, of course, is the firearms connections, which I'm going to
17 go into in some detail after the Spence case. We know that the
18 .40 caliber weapon used in the Wyche murder was also used during
19 the shooting involving Lee and Epps case on March 11th of 2002.
20 The .40 caliber Glock found in the woods on the Spence case was
21 also used in the Lee case as one of the shooting weapons.

22 So there is a connection, a powerful one, a firearms
23 connection between the Wyche murder and the Spence murder by way
24 of the Lee murder. And given Mr. Gardner's, the overpowering
25 evidence of Mr. Gardner's involvement in the Spence case, as well

1 as Mr. Montgomery's testimony about how Mr. Gardner and Mr.
2 Martin had guns that were dirty or which had bodies on them, that
3 shows once again Mr. Gardner's membership, as well as Mr.
4 Martin's, in the ongoing conspiracy and in the Wyche murder plot.

5 Now, that does bring us to the murder of Tonya Jones
6 Spence on June 7th of 2002, the last of the murders in this case.
7 And a different one in many respects from the McCaffity and the
8 Wyche murders, when you consider that this one doesn't involve a
9 car. But for reasons I'll get into, they are actually very
10 similar because when you look at Spence carefully, once again,
11 it's a trap murder. It's a set-up.

12 One thing should be very clear absolutely from go, is
13 that the evidence is overpowering that Mr. Gardner is one of the
14 murderers of Tonya Jones Spence. Did he pull the trigger?
15 Doesn't matter under the law. The witnesses say it was the guy
16 in the red hat, which points to Mr. Holly. It doesn't matter who
17 pulled the trigger under the law of aiding and abetting, under
18 the law of coconspirator liability and, frankly, under the law of
19 common sense. Mr. Gardner is as guilty as he can be of this
20 case.

21 Why is he guilty? He's arrested there. He's got tight
22 braids. Therefore -- arrested outside the woods. He has tight
23 braids, consistent with the description by Andrea Smith and Kelly
24 David, of an individual who was at the murder and then running
25 across Old Court Road in an attempt to get away.

1 Your Honor, I'll pull out the easel again.

2 THE COURT: Yes.

3 MR. HANLON: Is this all right, Your Honor?

4 THE COURT: Yes.

5 MR. HANLON: Ladies and gentlemen, if anybody can't see
6 this, please let me know. Testimony of Andrea Smith and Kelly
7 David. Andrea Smith was a young girl at the time, witnesses the
8 murder. Testified, her statement written at the time indicated
9 that a man in the red hat, evidence showing is Aaron Holly,
10 pulled the trigger. A younger friend named Deandre Wesley, who's
11 the son of Kelly David, is also there. He describes latex gloves
12 and, also, two individuals at the time of the shooting.

13 Everyone who is present at the shooting testifies that
14 the two men run away in the direction of Old Court Road down, and
15 ultimately, which is in the direction of Carlson Lane. On
16 Carlson Lane, Kelly David, who was driving home that day, sees
17 two men, one with braids, one with a red hat, entering the woods,
18 or running across the street, rather. She looks back and sees
19 them entering these woods, the Carlson Lane woods, approximately
20 here.

21 Police officers testified that our defendant, Shawn
22 Gardner, and Aaron Holly, are arrested here in the Greens
23 neighborhood, approximately where that red star is.

24 No one's wearing a red hat. Mr. Gardner did have
25 braids.

1 Now, the evidence proving his involvement in the case?
2 Number one, we know that the two individuals arrested at that
3 scene are the individuals who are present at the murder,
4 including Mr. Holly and Mr. Gardner. They're identified that way
5 by Andrea Smith, who's given an opportunity to look at them
6 moments after the shooting. Kelly David also identifies them as
7 the men she saw running across the street, Carlson Lane.

8 We know that they're making desperate attempts to get
9 into people's houses here in an attempt to find some kind of an
10 escape, consistent with trying to get away from the police.

11 They are arrested at the end of quite literally a trail
12 of bread crumbs linking them back to Carlson Lane, where Kelly
13 David saw them. They're arrested here. They're seen here and
14 they're seen at the murder scene. Inside those woods we have
15 latex gloves, we have a red hat, we have a gray shirt indicating
16 that they've discharged or gotten rid of all their clothing. We
17 also have in these woods, ladies and gentlemen, the murder
18 weapon, a .357 revolver, and a .40 caliber Glock semiautomatic
19 handgun, both with ammunition, although the .357 was spent.

20 That Mr. Gardner was one of the murderers of Ms. Spence
21 is absolutely obvious from that evidence. Few things could be
22 more obvious in life than that he is one of the individuals who
23 carried out that woman's execution.

24 The witnesses testified that she was driven over her
25 balcony in terror, fell to the ground. Two men identified by Ms.

1 Smith as Mr. Gardner and Mr. Holly walk up to her and execute her
2 on the ground in front of her apartment building. Mr. Gardner's
3 guilty of the murder unquestionably. He was there with Mr.
4 Holly. He's aiding and abetting the crime. There are two guns
5 used. This is quite obviously team action, regardless of who the
6 shooter is.

7 I submit to you, you should spend no time worrying
8 about who the shooter is. It does not matter. What matters is
9 that this is two men who carried out this crime.

10 I've talked about the trail of bread crumbs already,
11 ladies and gentlemen. I got a bit ahead of myself. Mr.
12 Gardner's guilt in the murder is fairly obvious. For purposes of
13 our case, a conspiracy and racketeering case, the background
14 becomes relevant. What is the background and planning of this
15 crime?

16 Well, that testimony comes from William Montgomery, who
17 testified in this case and was one of the government's witnesses.
18 I've already talk about his background. He's a hit man and he
19 has a long record of criminal activity that he talked about. But
20 his testimony's important in this case because it does put the
21 Spence murder in its broader context. He shows the planning of
22 the crime and he shows how the plan was actually carried out.
23 Then he connects it, ultimately, to our conspiracy.

24 It begins with the robbery business that we talked
25 about at the very beginning of the day. Testimony from Mr.

1 Montgomery is that he was a member of this conspiracy way back,
2 that they did robberies. In 2002, he bumps into Mr. Martin at a
3 Shell station. Mr. Martin had an idea to rob somebody named
4 Goose, another drug dealer.

5 Mr. Martin, this was Mr. Martin's thing. That's how
6 Will Montgomery did it. Mr. Martin had a relationship with
7 Goose, knew where they could find him, and they were thinking
8 about putting things together.

9 Mr. Gardner was a member of this conspiracy as well.
10 He was a member of the planning. In fact, Mr. Montgomery
11 described one day where they bumped into Goose or were about to
12 bump into Goose and Mr. Gardner had to keep Goose and Montgomery
13 separated so that Goose wouldn't know that Mr. Gardner was
14 hanging around with Will Montgomery, who was known on the street
15 for being somebody who killed people.

16 So we have this plan to kill Goose. And this is part
17 and parcel of this entire business we have been talking about,
18 the robbery of a drug dealer. That's the business that's at the
19 center of this case. And the Goose operation is just part of it.
20 In this instance, Mr. Martin is the leader of this particular
21 operation.

22 Now, meanwhile, Mr. Montgomery is also beginning to put
23 together or has been approached by Mama, Jamane Johnson, about
24 the possibility of doing something with respect to Darius Spence.
25 Jamane Johnson's got a problem with Darius Spence because Mr.

1 Johnson is carrying on with our ultimate victim, Tonya Jones
2 Spence. They're having a relationship behind Darius Spence's
3 back.

4 Mr. Montgomery and Mr. Johnson discuss doing something
5 like this. And it's a profitable opportunity once again because
6 Darius Spence is a drug dealer, is no doubt going to have money
7 and drugs that can be taken during the murder/robbery, to say
8 nothing of any money that Mr. Montgomery might make just from the
9 murder itself.

10 So there's a plan to kill Darius Spence evolving into a
11 plan to commit a robbery of Darius Spence at the same time.
12 Totally consistent with the type of business that Will Montgomery
13 carries on with this organization. Of course, we see culminated
14 in the ultimate carrying out of the plan to actually do this
15 robbery with Shawn Gardner, partially for the benefit of Shelly
16 Wayne Martin.

17 But it's important to put this crime in focus because
18 between the plan to rob Goose and the plan to rob Darius Spence,
19 this is just part of the business of this racketeering conspiracy
20 and the drug conspiracy that we've been trying in this case that
21 Mr. Martin and Mr. Gardner are involved in, beginning with Goose,
22 ultimately connecting with Mr. Spence.

23 When Shelly Wayne Martin gets locked up during this
24 time frame, the focus has to shift to Darius Spence. It needs to
25 because the Goose thing was Shelly Wayne Martin's thing. It was

1 his operation. He was the leader. That's how Mr. Montgomery
2 talked about it. Martin's thing or Wayne's thing.

3 So the focus turns to Darius Spence. And they begin
4 focusing on Darius Spence as a new opportunity and one that had
5 already been in the works. Mr. Montgomery begins doing
6 surveillance at the location with Mr. Gardner and also Aaron
7 Holly, who becomes a member of the group. Shelly Wayne Martin,
8 again, is unavailable after all because he's locked up.

9 They do surveillance for an extended period of time,
10 several weeks. It's carefully planned out. And ultimately, the
11 plan that evolves from all of this is that they're going to go in
12 there, they're going to take Tonya Jones Spence, they're going to
13 duct tape her up, and they're going to wait for her husband to
14 come home. It's another trap, ladies and gentlemen. It's
15 another trap. A different form of trap but a trap nonetheless.
16 And it's a trap of a drug dealer, just as in the Wyche case.

17 Now, Mr. Gardner's reasons for doing this become
18 relevant as we consider the conspiracy and the racketeering
19 charges. And Mr. Montgomery's testimony about this is crystal.
20 Number one, by putting this in context, it's clear that the Tonya
21 Jones Spence murder and Darius Spence robbery was just a part of
22 the business of the group. It evolved from the Goose operation.
23 It became the Darius Spence operation. But it was always the
24 same idea, always the same basic concept. And that's what this
25 group does. We know that from Mr. Montgomery's testimony, Mr.

1 Bacon's. And we've already seen it carried out in the Wyche
2 murder, which was a couple of months before the Spence operation.
3 So this is part of the group's business, the Goose background,
4 the Darius Spence background.

5 And again, Goose begins as Mr. Martin's thing, which
6 he's putting together with Mr. Gardner, and they bring Montgomery
7 into it. It's part of the background linking this ultimate crime
8 to our case.

9 Then ultimately, as the focus shifts to Darius Spence,
10 there's another more specific motivation; that, of course, Mr.
11 Gardner knows that he needs to get some money together for Shelly
12 Wayne Martin's attorney. We know that because he told, because
13 he talked about having to do that. This was part of Mr.
14 Montgomery's testimony as well.

15 It's been a great deal of debate, a great deal of
16 argument and cross examination about whether or not he said, did
17 Mr. Montgomery say it here, did he say it here, and did he say it
18 here, and so forth? His testimony in this case was absolutely
19 clear. And that he didn't talk about it before, ladies and
20 gentlemen. Again, ultimately, you're the judge of the facts here
21 and you can consider for yourselves. But Mr. Montgomery's always
22 provided information, even in the areas where there was cross
23 examination, that Mr. Gardner needed money. He wanted money. He
24 recently lost some money, he wanted some money.

25 The only thing that's been added in this case is a

1 particular purpose of that money or one of the particular
2 purposes of that money. Not exactly the kind of thing that a
3 witness would feel the need to provide false testimony about.
4 Mr. Montgomery hardly strikes any of us as a scholar in the area
5 of racketeering law, such that he could come up with this on his
6 own.

7 In any event, Joyce Parsons, Mr. Martin's mother,
8 corroborates a great deal of this, unintentionally of course,
9 because we know that during this time frame she was going to some
10 difficulty. She had to borrow \$10,000 in order to pay for her
11 son's attorney.

12 Now, she appears to have gotten that money together
13 okay. But we know from her testimony that Mr. Martin would have
14 been aware that his mother was putting herself in debt to get an
15 attorney. All Mr. Martin's mother confirmed at all was frankly
16 to back up Mr. Montgomery on this point. We know Mr. Martin
17 needed an attorney.

18 And it's worth noting and evaluating Mr. Montgomery's
19 points on this case that he's corroborated on virtually
20 everything he says. He talks about latex gloves. He talks about
21 a revolver and a .40 caliber. He talks about a red hat. He
22 talks about yellow walkie-talkies. He talks about a lady falling
23 off a balcony. He is corroborated on every point in this case.

24 The crime took place exactly the way Mr. Montgomery
25 said it did. The tools that were used are exactly the tools that

1 Mr. Montgomery said would be used. He's corroborated on point
2 after point after point, when you consider the forensic and
3 physical evidence recovered.

4 He even knew from talking to Mr. Martin and Mr. Gardner
5 that the .40 caliber they were using could not be the murder
6 weapon. What did they tell him? There were bodies on the .40
7 caliber. There were bodies on the .40 caliber. So that can't be
8 used. It's going to be there as backup but use the .357, which
9 is exactly what was used.

10 How does Mr. Montgomery know that there's a .40 caliber
11 with bodies? He knows that because he's told by the defendants,
12 Mr. Martin, Mr. Gardner. How would he know that and how is he
13 corroborated? Because there were bodies on that .40 caliber. It
14 was one of the weapons used in the Lee/Epps case.

15 He was right on that point. He's corroborated on that
16 point.

17 Mr. Montgomery testified that just before the murder,
18 he uses Mr. Gardner's cell phone to call Jamane Johnson, Mama.
19 Backed up by toll records about that. He's backed up on
20 everything, ladies and gentlemen.

21 Now, the defense did present the testimony by way of
22 transcript of Mama, Jamane Johnson. And they've attempted to
23 draw some sort of a problem there by way of the fact that Mr.
24 Johnson doesn't talk about Mr. Gardner during the course of his
25 testimony.

1 He pled guilty to being in a conspiracy with them to
2 commit murder. But as we know, ladies and gentlemen, you don't
3 have to know your coconspirators to be guilty of the crime of
4 conspiracy. That's certainly evident from Mr. Johnson's
5 testimony.

6 Ultimately, Mr. Johnson's testimony is hardly
7 inconsistent with Mr. Montgomery, except perhaps on one point.
8 And that's whether or not Mr. Johnson was ever present with Mr.
9 Holly and Mr. Gardner at the same time doing surveillance. Mr.
10 Montgomery testified they were together once. Mr. Johnson's
11 testimony doesn't, isn't consistent there. It's a mild
12 inconsistency, ladies and gentlemen, hardly something Mr.
13 Montgomery would feel the need to make something up on.

14 Does Mama, Jamane Johnson, have a motivation to be less
15 than truthful? Absolutely. Because he's not going to be willing
16 to agree to anything that puts him in a conspiracy to commit
17 murder or that would put him in a conspiracy to do harm to Tonya
18 Jones Spence, who was his lover at the time. Consider that in
19 evaluating Jamane Johnson's testimony. Ultimately, it does very
20 little to detract from Mr. Montgomery.

21 The Spence murder and robbery represents the last of
22 the instances in this case that a murder is done by this
23 conspiracy to rob a drug dealer. Slightly different than the
24 Wyche/McCaffity crimes, but actually very similar when you
25 consider the motivation, the team work, the advanced planning,

1 the fact that a witness, a possible witness is essentially
2 executed during the course of the crime, and the fact that it was
3 a trap to snare a drug dealer and take his money and/or his
4 drugs. It is the work of this conspiracy, as proven by Mr.
5 Gardner's arrest and by the connections with the previous robbery
6 planned of Goose with Mr. Martin.

7 Now, as we move past the murders, ladies and gentlemen,
8 there are a few other odds and ends to talk about in this case.
9 Count 17, I'm sure you hoped I was done with the indictment but
10 there are a couple of counts we need to talk about.

11 Count 17 charges Mr. Gardner with possession of a
12 firearm by a previously convicted person. This arises right out
13 of the Spence case. It's essentially the guns on the Spence
14 case. The elements of this crime are possession of the firearm.
15 In this case, the possession could be joint with Mr. Holly. It
16 don't matter whether or not Mr. Gardner had one gun or both guns
17 or anything like that.

18 You can possess guns jointly with another person. And
19 there's no better example of joint possession when you commit a
20 crime with someone and you both got guns. Under the law, both of
21 you are in possession. The guns in this case are the .40 caliber
22 Glock and the .357.

23 It must be shown that the firearms had traveled in
24 interstate commerce and, of course, Mr. Gardner must have a prior
25 conviction at the time of the possession. All those elements are

1 met here. The conviction's stipulated. And the firearms, the
2 Glock and the revolver, were both manufactured outside Maryland,
3 as Special Agent Boroshok testified.

4 Now, I talked previously about the connections between
5 the Spence murder and the Wyche murder by way of the Lee/Epps
6 case. And I do want to talk about that for a few minutes because
7 it is important.

8 The connections are simply, ladies and gentlemen, I
9 think you've heard this a great deal already, you have the
10 Lee/Epps shooting here in the middle. Two .40 caliber weapons
11 are used during that case. The Lee/Epps murder is significant
12 because it connects two of our crimes. One of those .40
13 calibers, a Glock, was used also in the Spence case. And one of
14 the .40 calibers in the Lee murder was used during the Wyche
15 murder. So we have a connection of the Wyche and Spence murders
16 by way of the Lee/Epps murder, which took place before both of
17 them in March of 2002.

18 We know that they've been matched up by way of firearms
19 identification testimony from the various examiners that examined
20 all the items, including comparisons with the Glock, comparisons
21 with the casings and bullet fragments, and so forth. And the
22 evidence is persuasive, ladies and gentlemen. The various
23 examiners testified about this.

24 The relevance of this evidence is that it shows that
25 the Wyche and Spence cases were part of the same course of

1 conduct, the same conspiracy. The guns are being used in a
2 common series of crimes connected by way of the Lee/Epps murder,
3 powerfully.

4 And it's also significant, ladies and gentlemen, not
5 only because of the use of these guns in common, overlapping
6 crimes demonstrates that the guns themselves are the instruments,
7 the property of the same conspiracy, the same organization, but
8 the history of these weapons having been used in the Lee/Epps
9 shooting and later one of them in Wyche and later one of them in
10 Spence, corroborates several of the government's witnesses that
11 have testified about the origins of these various weapons and
12 about how they came to be in the hands of the various defendants
13 and the other members of this conspiracy.

14 Specifically, again, the subject of a .40 caliber used
15 in Lee and Wyche and a .40 caliber used in Lee and Spence. This
16 backs up two witnesses in particular, Rodney Hayes and Will
17 Montgomery, both of whom testified about the history of .40
18 caliber weapons that they came into contact with in 2002 in
19 connection with the defendants. And both of them who had
20 knowledge from the defendants about what these weapons had been
21 used for.

22 Rodney Hayes testifies that he lost his 9 millimeter
23 Larkin that ended up getting taken away when Mr. Mitchell got
24 arrested. And he testified that the way that happened was
25 because Mr. Mitchell needed to ditch a .40 caliber gun of his

1 own, which was dirty. And Mr. Hayes testified that it would be
2 dirty if it was used to shoot somebody. We've heard other
3 witnesses talk about a gun having a body on it.

4 So Mr. Hayes testifies that Mr. Mitchell's trying to
5 get rid of a .40 caliber. The timing would have been just in the
6 wake of the Wyche case because it's a week after that murder that
7 Mr. Mitchell gets arrested. Corroborated by the Spence/Lee/Wyche
8 testimony.

9 And William Montgomery is also corroborated by this
10 series of connections in the firearms testimony because he knew
11 from talking to Mr. Martin and talking to Mr. Gardner that the
12 .40 caliber gun that they used during the Spence crime also had a
13 body or bodies on it. The defendants told him that. And he was
14 told right, because at the time that gun was used as one of the
15 guns in the Spence case, it did have bodies on it. It was dirty
16 from the Lee/Epps shooting.

17 This is powerful evidence linking these guns, linking
18 the defendants, linking Wyche and Spence, and corroborating the
19 witnesses that have testified about how these conspiracies
20 operated.

21 Now, in the wake of the 2002 investigations and the
22 arrests of several of the defendants, the conduct actually
23 continues. And it continues, according to the indictment, all
24 the way into 2006 as to the racketeering activity.

25 This conduct is important not only to understand

1 specific allegations after the 2002 timeframe but also, ladies
2 and gentlemen, a lot of this post-murder conduct is really
3 reflective of how concerted and joint and coordinated the
4 defendants' activities had been, even after their arrests.

5 Some of this information becomes available to us from
6 the search of Seamon Avenue on January 22nd of 2004, which is Mr.
7 Harris's home. That search is done, you heard Special Agent
8 Brian Klas talk about it. And during the course of that case a
9 .45 caliber Llama, seen here in the photograph that is
10 Government's Exhibit SE-4, is taken from a kitchen furnace
11 closet. Sometimes it's called the kitchen closet. Sometimes
12 it's called the pantry. Sometimes it's called the furnace room.
13 But we all agree and we all remember where the gun came from.

14 Mr. Harris writes about having a four-fifths. Writes
15 about having guns. Writes about shooting people. And a .45
16 caliber handgun is found inside the kitchen closet of his home.

17 We also, ladies and gentlemen, find the lyrics that Mr.
18 Harris had been working on, most of which, if not all of them,
19 with some exceptions, are signed Hard Roc.

20 Among the lyrics is something that Mr. Harris had put
21 together calling for the release of his friends, Free Bo and
22 Weaze. And a similar sentiment comes out from many of the lyrics
23 that you heard about during the course of the case.

24 Throughout the house and in close proximity to the
25 firearm are identification documents and pieces of paper with Mr.

1 Martin's or Harris's name, leaving no doubt whose gun it was.

2 And course we have a black binder and a red folder
3 filled with rap lyrics from Mr. Harris's home, which I'll come to
4 in a little bit.

5 The Seamon Avenue search is relevant, ladies and
6 gentlemen, because, number one, the possession of a firearm by
7 Mr. Harris that day is the basis of Count 18 of the indictment,
8 another possession of a firearm by a previously convicted person
9 count. The elements again, possession. We've already talked
10 about that. Even though the weapon was not in Mr. Harris's
11 personal, personal control at the time of its seizure, it is
12 still his weapon, ladies and gentlemen, under the concept of
13 constructive possession, if he had knowledge of its presence and
14 if he had control over it in the sense that he knew where it was
15 and had access to it.

16 My wallet is sitting in my bag some place, I don't know
17 where it is, but it's still in my possession even though it's not
18 on my person. The same goes for this gun, ladies and gentlemen.
19 It is Mr. Harris's gun. It was found with his property. He was
20 in possession of it even though it wasn't taken off of his
21 person.

22 The gun is manufactured outside of Maryland. And it's
23 been stipulated in this case that Mr. Harris had a prior
24 conviction. This is one important element of the Seamon Avenue
25 search.

1 The other one, of course, is the seizure of those rap
2 lyrics, which is another element of this case and which is
3 another piece of important evidence linking the various
4 defendants and their business.

5 The Shakedown entity has been, and Sheistyville and all
6 those relationships have been the subject of a lot of testimony
7 in this case. Again, ladies and gentlemen, Shakedown and the rap
8 business are not the same as the racketeering organization that's
9 charged in Count One of the indictment. Shakedown's part of it,
10 once it comes into play, and it was certainly used by the members
11 of this conspiracy and by the members of the enterprise for the
12 benefit of the group, but Shakedown is not the same thing as the
13 organization. Shakedown is only part of it.

14 You may or may not be convinced that the Shakedown
15 entity was so much a part of this enterprise as to actually be
16 part of it. Doesn't necessarily mean that the defendants aren't
17 guilty. Shakedown is certainly of evidentiary value. But don't
18 overemphasize its importance. It's not the same thing as the
19 racketeering enterprise that's charged in Count One,
20 notwithstanding the fact that there's been a great deal of
21 attempt from time to time to suggest that if a defendant was not
22 involved in Shakedown, he could not be involved in the conspiracy
23 or the enterprise. That's not the law and it's not the facts.

24 Where Shakedown is important was because this is Mr.
25 Harris's platform for celebrating the members of this group,

1 celebrating the history of this group, and celebrating the
2 accomplishments of the group. And he did it with great glee and
3 he did it extensively.

4 Shakedown and the lyrics here that Mr. Harris wrote are
5 about real people, real events, real crimes, and real places.

6 Now, there's, it was a fascinating piece of testimony
7 yesterday from Mr. Cook about rap lyrics. And he and I had an
8 interesting discussion. And I learned a lot about the history of
9 hip-hop and rap. But ultimately, it's not terribly illuminating
10 to this case because Mr. Cook didn't have a chance to talk to any
11 of the people involved in the writing or production of these
12 songs.

13 You, ladies and gentlemen, are in a better position to
14 evaluate the evidence in this case and the songs, and evaluate
15 for yourselves what these songs are. And what they are are
16 powerful admissions from Mr. Harris as a member of this
17 conspiracy, as a member of this enterprise, about how the
18 enterprise and the conspiracy worked. This is a member of the
19 group talking about the group's activities.

20 I mentioned before that conspiracies don't usually take
21 minutes, they don't usually have agreements in writing.
22 Incredibly, this is a case where we come pretty darn close to
23 having that. And in evaluating these lyrics, what ultimately
24 demonstrates their truthfulness is how frequently the lyrics are
25 corroborated in this case.

1 And just by way of a few examples, ladies and
2 gentlemen. I assure you this will not take as long as it did
3 when I presented the testimony of Special Agent Klas.

4 There are frequent references here to selling crack.
5 My crack sells and my weed sells. I'm well connected. My thugs
6 ride and my slugs fly. Bo's home now, we blowing hard. Now
7 let's get this do know. Going to take death to stop us from
8 bucking these rounds.

9 It's a reference to crack dealing, it's a reference to
10 Bo, and it's a reference to bucking rounds. We've heard about
11 every one of those things during this case, ladies and gentlemen.
12 That's not fiction, it's fact here.

13 Your guns might pop but guns at the Heights pop just a
14 little louder and piss in their own fingers to remove the powder.
15 The Heights, Park Heights, is a real place, ladies and gentlemen.
16 We're not talking about Napoleon here. We're talking about real
17 people and real places.

18 We back to doing black on black crimes, back in these
19 streets, busting black on black nines. Ladies and gentlemen, the
20 victims in this case were African-Americans. A reference to a
21 black on black crime in this case is a reference to the victims
22 in this case. So they are not made-up people. They are real
23 people. And this is celebrating real things.

24 In terms of authenticating and verifying the music
25 here, ladies and gentlemen, the songs themselves talk about how

1 truthful they are. I live it. Fuck finding out the truth
2 because I did it. Feds still trying to find out more about me
3 and the fools that I've hitted. The truth, ladies and gentlemen.

4 What do you think, I just make this shit up? I don't
5 even have to go through the hassle.

6 We've had cases, we've had evidence in this case about
7 people being shot in the head, brains dropping on floors, Roc
8 will come to leave you and the forensic technician popped in the
9 morgue. I went hard to the point I lost my fucking finger and I
10 don't mind losing another one of my life. Love to the Heights.

11 This is all corroborated by other evidence, ladies and
12 gentlemen. People have been shot in the head in this case. Mr.
13 Harris did lose a finger and Park Heights figures in this case.

14 Leaving aside the truthfulness of the songs, the
15 truthfulness of the lyrics and, in fact, the evidence of their
16 truth is overpowering. All of them contribute to the atmosphere
17 of fear. Now, in that context I'm quoting something that Mr.
18 Cook said yesterday. Part of this case has been the atmosphere
19 of witness intimidation that has been part of this group's
20 activities. The Shakedown lyrics are part of that, not the only
21 thing. The manufacture of the Stop Snitching video and the
22 involvement of Mr. Harris in that tape is certainly another part
23 of that.

24 But these lyrics communicated to this community the
25 consequences of talking against these defendants. And what

1 happens to these people? What happens to people like Mark
2 Herbert, whose names go out there? They get zeroed out. They
3 get ratted out. And that's what all of this is about, ladies and
4 gentlemen.

5 I blast lungs but really aim for lips. You think yours
6 dog all snitch to the DEA? That's for them niggas who be talking
7 shit. You don't know nothing about putting hits on niggas. We
8 in a hurry because we really want to get at this nigga. My nigga
9 Bo a hurry tune. Just ask a nigga this shit about a balloon. We
10 gotta grab this nigga. References to Bo. References to blasting
11 lungs and really blasting lips. That's a reference to shutting
12 people up, ladies and gentlemen. That's a reference to shutting
13 people up.

14 References in celebration of Bo and the other people
15 involved in this business. Bo's general, I'm the captain, Slo's
16 sergeant now. TM stepped up from private. No need to hide it.
17 He was loyal, dedicated, plus survived riots. All real people,
18 ladies and gentlemen.

19 I leave him flat on his back for my nizzle, Bo. Let a
20 missile go. Who in this case, according to the evidence, has
21 left someone on their back for Bo? Mr. Harris has. His
22 fingerprints are found at the crime scene of the McCaffity
23 murder.

24 You know I keep the Mac loaded and I like to clap
25 rodents. That's why Bo and Weaze on lock now and every day on

1 lockdown. This is all true, ladies and gentlemen. Mr. Bo, Mr.
2 Martin, were locked up. And this is a reference to two of the
3 coconspirators in this case.

4 Mr. Harris talks about people getting shot down for
5 running their mouth clown. Tell me how it feels with a gun in
6 your mouth now. This is an individual who knows that people have
7 been testifying about his friends who are locked up, who was
8 sending a message to the community about the consequences, a
9 message that Mark Herbert hears loud and clear.

10 You need an army, a K and two fucking clips. You never
11 get close enough to get Bo hit. You never get close enough to
12 get Bo hit. What is Mr. Harris celebrating here? McCaffity.
13 Mr. McCaffity never got close enough to get Bo hit, did he?
14 Because Mr. Harris was there to put a stop to it.

15 To you, it might be entertainment but I'm speaking the
16 truth. It's a must that we ride. Death before dishonor. Never
17 talk to homicide. Keep your mouth shut. And that's how we
18 define honor in these lyrics. And again, celebration of the
19 truth. This is not fiction.

20 It's not fiction that it was an event Saturday night at
21 Lyles's party when it all went down. I wasn't there, but if I
22 was it would have been more clowns. He admits, Mr. Harris does,
23 about a real party and talks about not being there. There's no
24 puffery here. There's no puffing this up into more than it is.

25 Put the Ruger to your nozzle. We want all your shit.

1 .40 caliber weapon used to murder the Wyche brothers. And who
2 took all their shit? Whoever killed them did, with a .40 caliber
3 weapon. This is not fiction. This is a celebration of what Mr.
4 Harris was proud to have been involved in and what his
5 coconspirators were proud to have been involved in.

6 And why did they do all these things? What was the
7 purpose here? What was the goal of this conspiracy? I talked
8 about this at the beginning of my argument. Now as I approach
9 the end, we're coming back to it. What was the goal of all of
10 this?

11 It's just me, Weaze and Bo back to back with niggas
12 bopping and weaving one of your blows. Me, Weaze and Bo back to
13 back. This is how Mr. Harris looks at the world and this is how
14 Mr. Harris celebrated his business and his contribution to this
15 business.

16 Roc introduced you fucks to the afterlife. Whoodi, I
17 know you feeling me to the four-fifth. You can talk all day
18 about the use of Whoodi in a different context. If we go on the
19 internet, I'm sure, ladies and gentlemen, there's probably
20 something out there that talks about a Whoodi. And there's a
21 cartoon, according to Mr. Cook. And I'm sure that's probably all
22 true. But we've got a dead man in this case named Woody, who was
23 shot to death next to a young female friend in a car. And we
24 have a defendant writing about sending a Whoodi to the afterlife
25 and writing about watching your brains fall over on that bitch

1 next to you.

2 It doesn't take a genius, ladies and gentlemen, to
3 interpret these lyrics. And in the context of this case, with
4 all of the other evidence that we've seen, it is overpowering.

5 How do we know that Mr. Harris is telling the truth?
6 Because the lyrics, number one, say they are. Mr. Dobropolski
7 testified that Mr. Harris often talked about not wanting to be a
8 studio gangster, somebody who would be fake. The truth is
9 emphasized in these songs and ultimately they jive with the
10 evidence in this case.

11 We seem a similar attempt to construct an atmosphere of
12 fear with the Stop Snitching Two video. It's a video that
13 mentions numerous people in this case, including Darryl Bacon and
14 Will Montgomery, who both testified as witnesses. Mr. Bacon's
15 uncomfort being here was fairly obvious. TM has actually been
16 pushed to do to his way of thinking the right thing -- keeping
17 his mouth shut. The Stop Snitching video works, at least in Mr.
18 Herbert's case, at least in TM's case.

19 Shelton Harris's attention to this kind of thing is
20 also clear from Count 19 of the indictment. Mr. Harris is
21 charged by himself in this witness intimidation and assault
22 charge. You heard the testimony. He was brought here to court
23 one day by the U.S. marshals because he was being transported.
24 On that day, Mr. Hayes was also brought to court because he'd
25 been arrested that day.

1 One thing, ladies and gentlemen, was a great deal of
2 cross examination about this. One thing had nothing to do with
3 the other. I'm sure you're all experienced from paying your
4 taxes and dealing with the government, the government is fairly,
5 is very rarely so efficient to be able to secretly put two people
6 in a jail cell at the same time. We had different agents in this
7 case doing different things and they ended up there at the same
8 time. It was regrettable. But what happened there was a crime.

9 Mr. Harris sees somebody that's been testifying against
10 him and he assaulted that person, a witness named Mr. Hayes. He
11 even called him a rat bitch, according to Mr. Hayes's testimony,
12 leaving no question as to his motivation. Of course, as though
13 we had any further question from the rap lyrics I just got done
14 talking about.

15 This was an assault with the intent to intimidate a
16 witness. And Mr. Harris is therefore guilty of Count Nine of the
17 indictment, which really, frankly, just goes hand in hand with
18 everything that Mr. Harris has done in this case, from the lyrics
19 to the other cases we've seen. This was more an attempt by him
20 to do what he believes is his duty and his right to do.

21 Now, the final act in this case. I'm sure you're all
22 relieved to hear it's the final act, is, of course, the courtroom
23 antics. This evidence is relevant not only to understanding one
24 of the ways that the conspiracy carried itself out. Just so you
25 don't worry, ladies and gentlemen, I'm not going through all that

1 stuff. This is evidence not only because it's a separate and
2 independent attempt much later in the case by the defendants to
3 interfere with court activities, but it's also an important piece
4 of evidence in terms of assessing all of the concerted conduct
5 that we have in this case.

6 There has been very rarely a better example of four
7 human beings getting together and acting as a team than we saw
8 with respect to the filing of these simultaneous motions with
9 identical language, by the defendants, using envelopes, ladies
10 and gentlemen, that are absolutely identical. That these
11 envelopes were deposited in the mail by the same person, you can
12 judge for yourselves. The same person prepared and sent all of
13 these envelopes. It's not clear who it is.

14 From Ms. Parson's testimony, Mr. Martin's mother,
15 strong piece of evidence suggesting that the envelopes were
16 deposited by some associate of Mr. Mitchell's, a female
17 attachment, Ms. Parsons testified. We also know that someone
18 forged her name on one of the documents because it wasn't her
19 signature. That document was notarized by an individual named
20 Michelle Mitchell. But whoever it was, it was someone working
21 for all of the defendants.

22 The documents are important because they are evidence
23 of a concerted conduct in the planning and the thinking and the
24 team work of these defendants, not only in the courtroom
25 obstructions, but in the whole case. And the real obstruction,

1 ladies and gentlemen, the real obstruction is not simply the
2 filing of these documents. You file away, ladies and gentlemen.
3 It's a big courthouse. There's plenty of places to put
4 documents. The real issue is the joint courtroom obstruction of
5 which you heard some recordings.

6 On cue, simultaneously, coordinated, the defendants one
7 day announced that they would be asserting these defenses. And
8 that's not really the whole thing, ladies and gentlemen.
9 Asserting defenses, assert away. These defenses were asserted in
10 such a way as to make it impossible to carry out the business of
11 this court. That's what makes it obstruction.

12 Asserting a defense, people are allowed to do that.
13 The defendants, working as a team, working simultaneously,
14 working off the same script. You heard that language. It's
15 barely comprehensible. I don't know what it means. I doubt very
16 much any of you know what it means. But it was all scripted and
17 it was all identical. And the defendants, one after the other,
18 made their announcement, I'm a flesh and blood man, demanded to
19 be called by their full names, refusing to recognize the Court.
20 Refusing to allow the Court to speak. And ultimately, preventing
21 the conduct of an evidentiary hearing. It had to be postponed.
22 That is obstruction.

23 And in this case and in this evidence, that was sort of
24 the last piece of evidence you saw of this group's coordinated,
25 concerted conduct. It is powerful evidence reflecting not only

1 an attempt to obstruct a particular proceeding or series of
2 proceedings, but it reflects the concerted, conspiratorial
3 enterprise nature of the defendants' activities in general. They
4 acted as a team. And when the time came and when needed to stand
5 up for one another one more time, and their backs were up against
6 the wall, we see them standing up for each other, quite
7 physically standing up for each other as a team.

8 That's what this case has been about -- the
9 coordination, the joint conduct of these defendants throughout
10 the case, from the drug trafficking in the 1990's, the robberies
11 that we heard about from Mr. Bacon, Mr. Montgomery, which were
12 frequently a part of this group's business, exchanging and
13 maintaining common resources, sharing suppliers, carrying guns
14 for common protection, carrying out drug trafficking, helping
15 each other be a successful conspiracy.

16 And in 2002, working in concerted activity. Mr.
17 Mitchell and Mr. Harris in the murder of Oliver McCaffity and Ms.
18 Brown, which was done because Mr. Harris, Mr. Mitchell believed
19 they were a threat to him. Carrying on to the identical murder
20 of Darryl Wyche and Anthony Wyche. All four defendants linked to
21 that crime by powerful evidence beyond any reasonable doubt in an
22 obvious motive to steal drugs and money.

23 And then, finally, the Tonya Jones Spence case, another
24 drug and money murder. Also demonstrating by absolutely clear
25 evidence beyond any reasonable doubt Mr. Gardner's involvement,

1 and also the fact that this evolved from a plan that came part
2 and parcel of this conspiracy for Mr. Montgomery, Mr. Martin,
3 beginning as a plan to rob Goose, evolving into the Darius Spence
4 plan.

5 The courtroom antics show us how coordinated the
6 defendants can be. The evidence in this case, all of it shows
7 that the defendants were coordinated in their drug trafficking
8 and in their murders.

9 And for those reasons, ladies and gentlemen, after this
10 long day, I do ask that you find the defendants guilty of the
11 counts of this indictment. Thank you.

12 THE COURT: By a show of hands, ladies and gentlemen of
13 the jury, would any of you have difficulty if we were to remain
14 until six tonight? Okay. Then we won't do that.

15 We'll take a recess and we'll see, Mr. Lawlor will
16 present his closing argument. And depending on how long he
17 chooses to go up to the limit that I've given him we may or may
18 not be able to get to Mr. Martin today. But in any event, we'll
19 resume tomorrow morning.

20 So we'll stand in recess for, shall we say, ten
21 minutes. Please leave your note pads on your chairs. Have no
22 discussion about the arguments or the evidence. Continue to keep
23 an open mind about all issues. We're in recess for ten minutes.

24 (Recess at 3:35 p.m.)

25 THE COURT: Ready to go, Mr. Lawlor?

1 MR. LAWLOR: I am, Your Honor. Your Honor, is that
2 easel there okay?

3 THE COURT: That's fine, yes.

4 (Jury enters the courtroom.)

5 THE COURT: Whenever you're ready, Mr. Lawlor.

6 MR. LAWLOR: Thank you, Your Honor. Good afternoon,
7 ladies and gentlemen. I know it's late in the day and I have to
8 say I appreciate your attention you paid to Mr. Hanlon, the
9 attention you've paid all these weeks of trial.

10 I know it's late and the last thing you all probably
11 want to hear is another lawyer prodding along, you know, for a
12 while longer about the case since you sat through and heard all
13 of the evidence. The bad news is you have to sit through this.
14 The good news is the judge has me under pretty strict time limits
15 and it's significantly less than Mr. Hanlon, although I think he
16 had a lot more to cover.

17 And the other thing is I'm fighting off a little cold,
18 so I certainly want to keep this as short as I can.

19 You know, ladies and gentlemen, it sort of occurred to
20 me during Mr. Hanlon's closing argument, kind of strikes me as
21 remarkable the force in which he speaks and the certainty in
22 which he speaks. It kind of amazes me in a sense that he speaks
23 without any reservation whatsoever about the evidence in this
24 case. I mean, to be honest, I think it's a little foolhardy when
25 you think of some of the witnesses that we've met and heard from.

1 And I'm going to talk about that.

2 But, you know, the main thing that I'm going to ask of
3 you as you begin your deliberations and go through your
4 deliberations in this case is not to think about how the
5 government has characterized the evidence or even how I'm going
6 to characterize it, because you may certainly well dispute how I
7 characterize the evidence or things I place emphasis on. And
8 that's why we have you here, the twelve of you who will be
9 deliberating.

10 The beauty of the system is, it matters not at all what
11 they say or what they think or how they characterize things or
12 their recollection of the events, but how you've perceived this
13 and do you believe someone.

14 Just to give you a couple of examples, and I'm going to
15 delve into this. But Mr. Hanlon, I thought, sort of gracefully
16 stepped through the rain drops concerning Mr. Montgomery. Now,
17 Mr. Montgomery didn't say much about my client. He doesn't
18 really know Mr. Mitchell. But Mr. Hanlon is asking you in a lot
19 of different ways to convict these four men based on the
20 testimony of Mr. Montgomery. And he's entitled to do that. And
21 he's going to say, hey, we take our witnesses as we find them, or
22 Mr. Harding will in his rebuttal case and, you know, it's not a
23 lot we can do.

24 But I think to fail to even recognize or address to you
25 the fact that Mr. Montgomery is a sick, sociopathic murderer and

1 you might not want to believe him, I think sort of belies who
2 that person is and really whether or not you should believe him.
3 And I'm going to talk about him in more and more detail. And I'm
4 sure other of defense counsel will.

5 But it's things like that that Mr. Hanlon says, and the
6 certainty with which he speaks about the evidence in this case,
7 that I found pretty fascinating. And so, you know, I'm certainly
8 going to go through and dispute many of the characterizations
9 that he made about the evidence and talk to you about mainly the
10 credibility of many of the witnesses that we've heard from.

11 Before I do that, let's talk a little bit about what
12 this case is not about. Okay?

13 Now, I represent Mr. Mitchell, Ms. Rhodes and I do.
14 And it's been our privilege and our pleasure to represent him
15 through these many weeks of trial. It's an obligation we take
16 seriously and we were pleased to do it. And I'm going to talk
17 about him.

18 But I'm not trying to pull the wool over your eyes,
19 ladies and gentlemen. I don't think, we all know that Willie
20 Mitchell is not an angel. Okay. I'm not going to lie to you and
21 say that Willie Mitchell never sold drugs in his life, that he
22 never carried a gun, that he's a perfect person. I'm not going
23 to do that because it's not the truth. But that's not what this
24 case is about.

25 This case is not about whether Willie Mitchell ever

1 sold drugs. He did. And I don't want to call it an irrelevancy,
2 but it borders on an irrelevancy because what this case is about
3 is whether or not these four men, these four inner city kids from
4 Baltimore are an enterprise in the legal sense of the word and
5 whether they conspired to do many of the things the government
6 has accused them of doing in the legal sense of the word.

7 What this case is also not about is whether or not they
8 carry guns. Mr. Mitchell did carry a gun. Again, I don't expect
9 you to want to leave this trial here and break bread with Mr.
10 Mitchell. We heard from many witnesses about the things that go
11 on in this city, and it's a shame. I think candidly we all bear
12 some of the responsibility here, and I'll touch on that a little
13 bit. But there's also not what this case is about.

14 It's not about whether these kids knew each other
15 because we know they did. We know that Willie and Mr. Martin and
16 Mr. Gardner associated from the time they were youths and their
17 paths crossed over the many years. And we know that Mr. Mitchell
18 and Mr. Harris were in a rap label together. But that's also not
19 what this is about.

20 And make no mistake about this, ladies and gentlemen.
21 This case is a tragedy. I will discuss and certainly dispute my
22 client's involvement in any murder, in any of these murders. But
23 don't let that be confused with the fact that each and every one
24 of these murders is a horrible tragedy.

25 And the whole situation we heard from too many

1 witnesses, too many young men who got caught up in this. That's
2 not to say that they don't and Mr. Mitchell doesn't bear
3 responsibility for the things that he's done. But I think it's a
4 sad indictment that these murders go on, so many of these murders
5 go on, so much drug dealing goes on, so much violent crime goes
6 on, and we as a society haven't stopped it to date. Okay? But I
7 will say again and again through this argument that those murders
8 all, all five of them, are very, very tragic circumstances.

9 Now, ladies and gentlemen, another thing, and the judge
10 instructed you on this during Mr. Hanlon's argument, because I
11 think he unintentionally made a couple mistakes about a couple of
12 the facts. And I am definitely going to that. Okay? This was
13 ten weeks of trial. I think the government called 75 witnesses.
14 I think we called another 14.

15 I sat next to Mr. Martin through the course of the
16 trial and we kind of had a running joke, because Mr. Martin keeps
17 notes that probably summarize and capture the testimony of the
18 witnesses better than does the court reporter, because I think he
19 can write down every word, and I'm not capable of doing that. I
20 notice many of you take, take a lot of notes during the course of
21 the trial. Again, I took notes. Obviously, I'm here paying
22 attention. If I misstate something, if I leave something out,
23 even a negative fact, I'm not trying to gloss over things here.
24 I have about an hour, candidly, to address you. And I'm going to
25 do that through the course of, you know, 14 years worth of

1 evidence and many, many different accusations leveled by the
2 government. So it's not an effort on my part whatsoever to be
3 deceptive.

4 Now, getting into a couple of the legal premises I'd
5 like to ask you to be aware of as you do your deliberations, as
6 you conduct your deliberations. One thing is, is that I and Ms.
7 Rhodes, we represent Mr. Mitchell. And there are four defendants
8 here. They were each represented by able counsel. And the judge
9 told you this, and he will tell you this again during his
10 instructions -- you have four times as much work to do as the
11 normal jury because you have to sit through four trials.

12 Mr. Hanlon said, I thought a little too casually, to be
13 honest with you, through the course of his argument, that they
14 did this and they did this and so on and so forth. Many, many
15 times he used the word "they." And they'll fall back on the
16 course, on the argument, well, this is a conspiracy and they're
17 all responsible for, for the actions of each other. And that
18 would be partially true up to the point that you find them to be
19 involved in some sort of conspiracy. And we're going to talk
20 about that.

21 But what I'd ask you to do is to go back through, I
22 believe it's 19 charges, many of which address several defendants
23 in each charge and discuss the evidence as to each.

24 These are not, this is not one man. This is not the
25 fate of a single person that you're being asked to sit in

1 judgment of. This is four different individuals, each
2 responsible only for their own conduct. Each responsible only
3 for their own conduct.

4 What Mr. Gardner might have done, what Mr. Martin might
5 have done, is not the responsibility of Mr. Mitchell. Likewise,
6 if you think that Mr. Mitchell did X, Y or Z, that is not the
7 responsibility of Mr. Harris or Mr. Martin or Mr. Gardner.

8 And I think the government was very, very quick just to
9 lump everybody together. And I would ask you not to do that. I
10 would ask you to address each of the charges as to each of the
11 defendants.

12 Now, let me talk about the broad net of charges that
13 are in this case. The first is the conspiracy. The defendants
14 are charged in a couple different conspiracies -- Count One, the
15 conspiracy to commit racketeering acts, the drug distribution
16 conspiracy, and then there are other conspiracies, also, dealing
17 with some of the specific homicides.

18 And again, Mr. Hanlon, I thought was kind of, kind of
19 quick just to say, well, it can be informal and anybody knows
20 anybody, anybody whose path crosses anybody, if they had any kind
21 of association, any kind of dealing, it doesn't need to be that
22 formal. They just have to have sort of a common interest.

23 But the instruction, what the instruction will say is
24 that a conspiracy is like a partnership. Okay? And when you
25 partner with somebody, conspire with somebody to commit a crime,

1 it's not a casual thing. Obviously, I can't wear the mike.

2 That's not a casual thing, ladies and gentlemen, to be
3 in a conspiracy to commit a crime, particularly the crimes that
4 these young men have been accused of.

5 Now, we've heard about the evidence in this case, which
6 is that these defendants certainly knew each other and their
7 paths certainly crossed from time to time over the course of many
8 years. And I think the government wants to have you lump
9 everything together and say, well, Mr. Martin and Mr. Gardner did
10 this and that in 1988 and Mr. Mitchell did this in 2000, and they
11 maybe bought from the same source, perhaps. And so that's
12 evidence of the conspiracy. And maybe a gun was traded from one
13 person to another person to another person and that demonstrates
14 the proof of the conspiracy.

15 And that's not to say that I agree with the proof of
16 that, and I'll address that as we get into the, to the actual
17 specifics of the offense. But what I'd like for you to think
18 about is, like I said, a conspiracy's a partnership. And what I
19 think these defendants represent are far from a partnership, but
20 rather folks that knew each other that, sadly, from time to time,
21 were engaged in drug distribution and perhaps had people that
22 they were working with or buying from at the same time. Does
23 that make it a conspiracy or partnership? No.

24 The analogy I'd like to draw is when you go to the
25 Orioles game. Now, I'm from Boston, I'm a Red Sox fan. So when

1 the Red Sox come to town, if I don't have tickets, I go down to
2 Orioles Stadium or Camden Yards. And there's a section where
3 they're set up where they let you scalp. So if you go over
4 there, and it's kind of not inside the stadium but on the side of
5 the stadium, undercover. There's 50 people there. Everybody's
6 who's got tickets who wants to sell them is there, and they're
7 all doing the same thing. They're all selling tickets. And
8 maybe some of them even got them from the same place.

9 Maybe one guy got his, he got four from Stub Hub and
10 now he only needs two, and another guy got six from Stub Hub and
11 he only needs four. So they got their tickets from the same
12 place. They're standing right next to each other doing the same
13 thing, selling tickets. Does that make that partners in crime?
14 Does that make them conspirators to sell Oriole tickets? No.
15 That means they're doing the same thing in the same place at the
16 same time. It doesn't make them partners.

17 And ladies and gentlemen, we heard from numerous
18 witnesses about the volume of drug activity in this city. And I
19 don't think I need to spend a lot of time on that because I think
20 you all know about the volume of drug activity in the city. So I
21 think, again, common sense, when you sit down to deliberate, do
22 people that are of the same age and who dealt drugs, are they're
23 going to run across some of the same people? Yes. Does that
24 make them conspirators? No.

25 Same analogy. If any of you have been in New York.

1 They have a diamond district there. I haven't been there and
2 bought diamonds there, but I've heard of it. It's a similar
3 thing. In a specific part of Manhattan, everybody who's selling
4 diamonds, not everybody, but there are a large number of people
5 who are set up on a block in Manhattan, and there are probably 5
6 or 8 or 50 different shops selling diamonds. And I'd be willing
7 to bet that there are not that many diamond distributors in the
8 world. So they're probably buying their diamonds from the same
9 place, many of them are. And they're selling them in the same
10 place. But that doesn't make them conspirators.

11 In that, ladies and gentlemen, again, read the
12 instruction, but I'd ask you to sort of focus on that partnership
13 language as we get into the things that these young men did and
14 whether or not there was any evidence of any partnership.

15 Likewise, ladies and gentlemen, think about and read
16 the instruction on RICO. Again, I thought Mr. Hanlon can be
17 informal or, formal or informal. It doesn't, it doesn't need to
18 have any real structure. But the charge has been laid here and
19 the statute exists for a reason. Okay?

20 And again, I won't read you the instruction. I ask you
21 to read it yourself when you get back to deliberations.
22 Obviously, His Honor, tomorrow, if we finish tomorrow, will read
23 you that instruction.

24 But the defendants are not charged with dealing drugs.
25 They are charged with being a part of an enterprise. Okay? And

1 I'm going to get into again what these guys did and what, what an
2 absurd notion is it to think, given the paucity of evidence, that
3 they did things together over the number of years that the
4 government said they did and how old they would have been at
5 those certain times, and how many different years they spent
6 apart from each other, either at college or at the Hickey School
7 or, sadly, while being incarcerated. But a racketeering act is
8 part of an organization. And I think you all know where it comes
9 from. It comes from the Mafia.

10 And you are talking about bonded, tight families that
11 are a continuing unit. And that's part of the thing. The
12 government has accused these young men of being part of an
13 enterprise that lasted for 12 years, began in 1994. Willie
14 Mitchell was 17 years old in 1994. Okay? And I think the
15 government went through great pains to characterize him as a
16 young Bonnie and Clyde when he was 17. He went to Hickey. And
17 that's a sad part of life, that a young man of his age had to go
18 to Hickey.

19 But are we really comfortable, are we really confident
20 enough in the evidence in this case to say that this young man at
21 17 years old was racketeering? It's absurd.

22 Mr. Harding went all, went out of his way whenever he
23 could to try to say that Mr. Mitchell, Mr. Martin, and Mr.
24 Gardner committed a robbery together when they were young men. I
25 will tell you that the evidence that they did a robbery together

1 is zero. And I will tell you that if you think that they did,
2 the impact of that is zero. Because 17-year-old young men are
3 not racketeers. If they did a robbery at that age, it's sad and
4 unfortunate, but it doesn't make them racketeers. It doesn't
5 make them part of an enterprise. It doesn't make them part of an
6 organization.

7 And compare, if you will, ladies and gentlemen, what it
8 means to be part of a racketeering enterprise. You met Eric
9 Clash, who was part of the Rice organization, who you heard a lot
10 about. And ladies and gentlemen, you heard from Mr. Clash and
11 Mr. Golder what a racketeering enterprise really looks like. You
12 heard about the Rice organization. And the Rice organization,
13 they, they bought and sold, according to the plea agreements, 150
14 kilograms of drugs. They went to California and Mexico to buy
15 their drugs. They had a Rolls Royce. They were a continuing
16 unit.

17 Now, again, these young men, each and every one of
18 them, and I don't want to speak for them or their counsel, other
19 than Mr. Mitchell, who I will speak for, but we all know that
20 each of these young men were arrested from time to time with
21 drugs. And how much drugs were they arrested with? 37 grams
22 here, 75 grams there, 10 grams here. I think Mr. Mitchell was
23 arrested in Altoona with 18 grams.

24 So not only is the evidence of their racketeering
25 belied by the facts of the case, but compare it to what the

1 government has referred to as a racketeering organization. You
2 heard about the Rice organization. You met many of the, you met
3 a couple of the members of the Rice organization. And you have
4 this plea agreement. It's Mr. Clash's plea agreement. I believe
5 it's P-5A and P-5B. Read the statement of facts for me, if I
6 could ask you to do that when you get back there.

7 Compare what they did to what these young men did. See
8 what the government called a racketeering organization in that
9 case to what these kids did and whether or not they're a
10 racketeering organization.

11 I'm going to stop there on that point. But I would ask
12 you to bear in mind that everything that comes from this case
13 from here on is within that structure. These young men are not
14 charged with dealing drugs or carrying guns. They're charged
15 with racketeering and the violent crimes that were committed
16 during the course of that enterprise. There is no enterprise,
17 ladies and gentlemen.

18 Candidly, every count falls. Once you decide, if you
19 decide that there's no enterprise, that there's no conspiracy,
20 your work is done as to many of the counts in this case. That
21 doesn't mean I'm not going to address those. Quite obviously, I
22 am. But I will tell you when you hear the Court's instructions
23 that once you, if you decide that there was no racketeering
24 enterprise in this case, if there is no conspiracy to commit
25 racketeering acts in this case, if there was no partnership,

1 there are no crimes thereafter in many of these counts.

2 Now, I'll get into a couple more instructions, ladies
3 and gentlemen. And then I'm going to discuss the facts. I'm
4 going to try to get through these instructions rather quickly.

5 Obviously, ladies and gentlemen, you know that this is
6 a criminal case. And there are, I'd say, the hallmarks of this
7 system rest on a few of the instructions that the Court is going
8 to give you tomorrow or early Friday. And the Court has given
9 you these throughout the case. But they are, of course, the
10 presumption of innocence, the burden of proof, and the standard
11 of proof.

12 Now, you're heard a lot of evidence through the course
13 of this case. I think we've been here ten weeks. And as I said,
14 Mr. Mitchell is no angel. And I don't submit to you that he is a
15 perfect man. I do submit to you that he's innocent of these
16 charges.

17 But aside from whatever else you might think in the
18 future, as this young man sits here right now he's innocent. And
19 we need for you to look at him as an innocent man because that's
20 what he is in the eyes of the law. He walked into this courtroom
21 cloaked in that presumption. Notwithstanding what Mr. Montgomery
22 said, Mr. Bacon said, and what Mr. Hanlon said in his closing
23 argument, that man sits here still under the presumption of
24 innocence. That is an innocent man, ladies and gentlemen.

25 And unless and until you go back and decide, based on

1 the evidence you heard from that witness stand, not based on
2 conjecture or suspicion or worry or concern, but proof beyond a
3 reasonable doubt, until you can reach that determination based on
4 the charges in this case, that man must be acquitted. He is
5 innocent. And you cannot convict him until you find that the
6 government has proved each and every element of any offense,
7 there are many offenses, of any offense beyond a reasonable
8 doubt.

9 They bear the burden. And the Court will tell you this
10 time and again, we have no burden. We could have sat there
11 throughout the trial silently. Quite honestly, we wouldn't do
12 that. But we have no burden in this case whatsoever. And it is
13 the government's burden to prove the case beyond a reasonable
14 doubt.

15 Now, I can't define that term for you but what I'd like
16 to do, if I could, is just compare it. I don't think that any of
17 you are lawyers. I can't remember from voir dire many of those
18 weeks ago. But assuming many of you are not, I would like to
19 compare that standard of proof to the other standards of proof in
20 the law.

21 Now, you know there are fender bender cases that go to
22 a civil case, where two people hit each other. And John Doe
23 might sue Sally Smith for damages. In that kind of a case, and I
24 can't spell very well, but the standard of proof in that case
25 would be preponderance of the evidence. Okay? Which, another

1 way of looking at it is like 51%. Okay? So unless and until one
2 party in that case -- and think of the scales of justice. All
3 you need to do is tip that. You can't see it? Okay. Sorry. Is
4 that going to be in the Court's way?

5 THE COURT: No. That's fine. Go ahead, Mr. Lawlor.

6 MR. LAWLOR: Is that okay? 51%. So think of the
7 scales of justice. One party tips the scales just a little bit,
8 then you can give money damages in a civil case. That's the
9 standard that's applied in that kind of a case.

10 One of the next highest, and I'm not going to go
11 through every standard, but another higher standard is clear and
12 convincing evidence. Again, I think that's kind of tough to
13 define in and of itself. But I'll tell you when they use that
14 standard.

15 If you're a parent and you have a child and the State
16 says that you're an unfit parent and they want to take your child
17 away, that's the standard they use, clear and convincing
18 evidence. Now, obviously, short of conviction in a criminal
19 case, taking away someone's liberty, I can't think of anything
20 that's more serious than terminating someone's parental rights.
21 And that is, that is the standard they would use in that case.

22 The standard we're using in this case is the highest
23 known to law, and that's beyond a reasonable doubt. Higher than
24 the standard they would use to take away someone's parental
25 rights is the standard of proof that you need to apply in this

1 case.

2 So certainly, the government, notwithstanding their
3 unwillingness to see any flaw in any of the evidence they
4 presented, in order for you, when you assess the evidence, to
5 convict Mr. Mitchell of any of these offenses, you need to find
6 that you do not possess a reasonable doubt of his guilt.

7 Now, I'm going to go through why I think there's a
8 mountain of reasonable doubt. In fact, I think given some of the
9 witnesses we have seen, there's more doubt than reason. But that
10 is the standard you need to apply.

11 So again, if I could be the scales of justice again.
12 Remember, in a civil case they start even. You've only got to
13 tip 51%. Here the scales don't start even because Mr. Mitchell
14 is an innocent man and the government needs to overcome that
15 presumption and convict him by proof beyond a reasonable doubt.

16 The Court will instruct you again what that means and I
17 can't define it for you. But comparatively, bear that in mind as
18 you conduct your deliberations.

19 The final instruction I will discuss with you is
20 credibility. Now, the Court will read it to you and I think it's
21 a fairly lengthy instruction. But it might as well say "use your
22 common sense." You meet people and talk to people every day.
23 You watch TV and make decisions about things you might purchase,
24 people you might believe. So credibility, in a sense, is an
25 everyday common thing.

1 One thing he'll instruct you, though, specifically
2 regarding credibility is motive. Does someone have a motivation
3 to be untruthful? And most of the witnesses that the government
4 has paraded before you have only a motivation to be untruthful.
5 They are liars. They are thieves. They are murderers. And they
6 have been bought and paid for by the government of the United
7 States for their service in this courtroom.

8 But not just the conspiracy instruction I'm going to
9 ask you to look at, but the Court is going to specifically
10 instruct you regarding these many witnesses, Mr. Montgomery and
11 Mr. Bacon, Mr. Golder and Mr. Clash, Mr. Reynolds, Mr. Hayes.
12 All these folks who got this tremendous benefit that they
13 received from the government, the Court is going to tell you,
14 don't just use my general credibility instruction with these
15 folks, you've got to use heightened care with them. He will
16 instruct you to use, and I'm paraphrasing a bit, but great
17 caution or great care.

18 And again, that's kind of common sense. I'm telling
19 you and the Court will instruct you, but it's common sense that
20 you should have a grave reservation about believing the testimony
21 of someone who wouldn't just come in here and be truthful. They
22 would only come in here and be truthful if their testimony was
23 paid for.

24 Now, what if I had, what if I had a witness for Mr.
25 Mitchell who was going to be a character witness or an alibi

1 witness or somebody like that, and they get up and said, you
2 know, on Sunday Mr. Mitchell couldn't have been at the 7-Eleven
3 because he was with me all day and, you know, we were hanging
4 around the 7-Eleven, smoking cigarettes and playing video games.
5 And then the government got up on cross and said, Why are you
6 here? And the witness said, Mr. Lawlor gave me \$10,000 to be
7 here. What would you think of their credibility? Would you
8 believe them?

9 Would you believe a witness who said, I got \$10,000 to
10 come and testify on behalf of Willie Mitchell? You would not.
11 You would say that there's absolutely no way. You don't need to
12 discuss or you wouldn't need to think about their mannerism or
13 was there testimony corroborated. Mr. Hanlon used the word
14 "corroborated" about 500 times during his closing argument.

15 You wouldn't worry about whether or not what they said
16 was corroborated by something else in the case. You would say, I
17 don't believe them because their testimony has been paid for.

18 But the government, again, they didn't touch on this at
19 all, but all those witnesses that I've just named, their
20 testimony has been bought and paid for. And I use \$10,000. But
21 let's use Mr. Montgomery, for example.

22 Mr. Montgomery confessed on that stand to the murder of
23 two individuals -- the murder of Mr. Cheeks and involvement in
24 the murder of Ms. Spence. I don't know much in this world, but
25 if there's one thing, I can't speak with the same certainty that

1 Mr. Hanlon speaks about or things that I haven't seen with my own
2 eyes. But if there's one thing I know more than I know anything
3 else, it's that Mr. Montgomery has killed more than two people.
4 And if there's anything else I know is that the scariest day for
5 the rest of my life is going to be the day that William
6 Montgomery gets out of jail because he is a sociopathic,
7 unrepentant, sorrowless murderer. Okay? And we all know that.

8 Now, Mr. Hanlon said, you know, forget all that, just
9 look at his, look at his testimony. But ladies and gentlemen,
10 does that make any sense to you? If you were, let's say you were
11 going to buy a car, okay? And you talked to the person and you
12 said, Well, what did you do for a living before you sold cars?
13 And it was William Montgomery. And Mr. Montgomery said, I was a
14 hired killer. Not only was I a hired killer, but when I saw that
15 someone might be upset about somebody else, I sought them out so
16 that they might pay me to kill someone. He lied about that on
17 the stand. He lied about that. And it's as shocking that he
18 lied as it is shocking that Friday is the day after Thursday.
19 Because he's a murderer, why wouldn't he lie? Okay.

20 But he said that Mr. Spence sought him out. And you
21 will recall that Mr. Spence came in here and said, my wife was
22 having an affair with Mama and Will Montgomery found out about it
23 and he came to me and said, I will pop him for whatever amount of
24 money.

25 So William Montgomery, in terms of assessing his

1 credibility, and I personally don't think you need to go that far
2 in deciding whether or not Will Montgomery is a liar because not
3 only is he a murderer, but he lied. I'm sure other attorneys
4 will talk about the many discrepancies in his testimony. But his
5 testimony has been paid for.

6 Again, I'm not sure of too many things in this world.
7 But one thing I'm sure about is that American civilization does
8 not need William Montgomery out of jail. Okay? He's going to
9 get a 40 year sentence, maybe, up to 40 years. He's getting that
10 state time. He talked about all these guys in state court. They
11 get good time and all that. So he's not going to serve 40 years.
12 He's going to be eligible for parole.

13 So know something. When this trial is over, know that
14 Mr. Montgomery will get out of jail and find out when that day is
15 and get new locks on your doors, because that is a scary
16 proposition.

17 MR. HARDING: Objection, Your Honor.

18 THE COURT: Sustained.

19 MR. LAWLOR: Ladies and gentlemen, his testimony was
20 paid for. He should be in jail for life for the things that he
21 did. But the government said, Mr. Montgomery, if you come in and
22 say X, Y and Z, testify in front of the ladies and gentlemen of
23 the jury, you won't have to serve life for all these things that
24 you did, we'll make sure that you don't serve more than 40 years.
25 Now, I don't know what the difference is the number of years that

1 he will serve as a result of his plea agreement versus the years
2 he would have otherwise served. But what's that worth in dollar
3 figures?

4 Let's say he got a 20 year break. What's a year of
5 your life worth out of jail? Now, I know none of you can fathom
6 that because none of you have been to jail or will go to jail.
7 But what is that year of your life worth, what is the year of
8 someone's life worth out of jail? And there's the currency that
9 the government trades to get people to come in here.

10 As I said, ladies and gentlemen, it was a long winded
11 way of asking you to look at an instruction. But consider if I
12 did that or if any of the defendants did that -- bear in mind we
13 can't. Okay? If I gave a witness \$10,000 to come in and
14 testify, the next thing that I would know would be handcuffs
15 coming on my wrists for obstruction of justice. I don't get to
16 pay people for testimony. The government gets to trade freedom
17 for testimony.

18 And I would ask you to evaluate, when you think of
19 these witnesses, when you think of their testimony, what was
20 their motivation, and use great care in evaluating them.

21 Now, I talked about this in the general sense, ladies
22 and gentlemen, that I think, putting it bluntly, I think the
23 government has overreached in this case. And I want to go
24 through some specific examples because I think I've been speaking
25 in generalities. But I'd ask you to think of these things as you

1 go through the case.

2 I'm going to go through, I'm going to try to go through
3 these quickly because I think I'm being long winded with my
4 points.

5 Ms. Duganne testified. She was the woman with Altoona,
6 when Mr. Mitchell is up there selling drugs. Both of these
7 Duganne sisters came in and testified that, and I can't remember
8 which sister was which, to be honest with you, but one said she
9 came in and bought the drugs on a controlled buy because she was
10 working with the police, and there was a gun in there. There was
11 a gun in there because Willie Mitchell is a gun-toting thug. So
12 we got to have a gun in there because that is the persona.

13 We don't want Mr. Mitchell only to be a small time drug
14 dealer. No. He's got to be a drug dealer who carries a gun
15 because he's a drug dealer, gun carrying thug. That fits the
16 story we're trying to tell.

17 But wait. The police come in two minutes later. Did
18 they find a gun? No. Okay. That was the officer. I asked him.
19 You would have found a gun. You searched the whole house.
20 You're concerned about officer's safety. We didn't find the gun.

21 But the government presented the testimony of Ms.
22 Duganne, that she saw this gun, even though we all know there was
23 no gun there. And I don't quite understand why they did that.

24 The next thing -- and these are in no particular
25 order -- is the testimony of Officer Barnes, who arrested Mr.

1 Harris. Remember him? Nice chap who says, Come down here and
2 admit to these drugs, Mr. Harris, or I'll throw your mom in jail.
3 I mean, give me a break. Shelton comes down there and says,
4 Those are my drugs. And he still throws Shelton's mother in
5 jail. This poor old woman. Throws her in jail.

6 That's not really my point. But sort of bear in mind
7 that as you assess the case, about how Baltimore City Police act.

8 MR. HARDING: Objection, Your Honor.

9 MR. LAWLOR: Threw the man's mother in jail --

10 THE COURT: Sustained.

11 MR. LAWLOR: -- because Shelton had drugs. But the
12 point is, he wrote a report at the time of the arrest, and I
13 can't remember the years exactly. I want to say the report was
14 '02. He didn't say that he gave Shelton any rights. Three years
15 later there's a proffer session with the government or a meeting
16 with the government. Said, Oh, yeah, I gave him his rights.
17 Three years later. Does that make any sense to you?

18 How many arrests do you think this man makes in a day,
19 a week, a month, a year? But three years later, he remembers
20 some nobody like Shelton Harris and, Oh, yeah, I definitely gave
21 him his rights. And the government put that evidence before you.

22 I talked about the fact that they arrested Shelton
23 Harris's mother. What about Mr. Mitchell's arrest? You
24 remember, he got arrested for selling heroin. Only problem was,
25 the police roll up, there's six people there. The drugs are over

1 there. Mr. Mitchell's here. There's six people. Some of them
2 go away. And they arrest Mr. Mitchell. Another guy's counting
3 money, not Mr. Mitchell. Another guy's counting money. But they
4 arrest Mr. Mitchell, who's near some drugs, near this heroin.
5 It's not on his person, nor is any money, nor is he selling to
6 anyone.

7 But they arrest him and the government presents this
8 evidence because not only is he a gun toting thug, but he's a
9 heroin dealer, too. Okay? Well, the drugs weren't on him, the
10 money wasn't on him. There were six people there. But the
11 government presented that evidence.

12 William Montgomery, I talked about him. But I want to
13 talk about him in a specific term, in terms of the government's
14 overreaching. They attribute all these things that Mr.
15 Montgomery did with Bo, because Mr. Montgomery, his dealings were
16 with Goo and I suppose a little bit with Mr. Martin. He didn't
17 really know Bo. But remember, we got to have an organization
18 here so everybody's going to know everybody and everybody's got
19 to be doing the same thing, otherwise, our whole case falls
20 apart.

21 Well, the only problem is, Mr. Montgomery was shown a
22 photo spread, two photo spreads. And you'll have these. I don't
23 have the exhibit numbers in front of me, unfortunately. But the
24 first one, which this is the funniest coincidence of the whole
25 case, he's shown a photo spread with six people in it, none of

1 them are Mr. Mitchell, and he picks out Mr. Harris and says
2 that's Mr. Mitchell.

3 I'm sure he wasn't coached. I'm sure he wasn't coached
4 to say, hey, who's the guy up in the right-hand corner? But of
5 all the people, he picks Mr. Harris and says that's Mr. Mitchell.
6 And then moments later he's shown a photo spread with Mr.
7 Mitchell's picture in it and he picks Mr. Mitchell. And they put
8 that testimony on.

9 And Mr. Hanlon talks about Mr. Montgomery and how he
10 knows Mr. Mitchell and he went to New York with Mr. Mitchell, and
11 that's why this is an organization, because Mr. Mitchell went to
12 New York with Mr. Gardner and with Mr. Martin. Because if he
13 didn't, we don't have a conspiracy. If he didn't, we don't have
14 a racketeering organization. But Mr. Montgomery can't even pick
15 his photo out of a photo spread.

16 Oh, and the other thing is about that trip to New York,
17 Mr. Montgomery said that he went with Mr. Mitchell and whoever
18 else he went with, and he said he went with Mr. Bacon. But Mr.
19 Bacon testified that he never went and bought drugs in New York
20 with Mr. Mitchell. So they present materially inconsistent
21 testimony.

22 You know why, ladies and gentlemen? That's called
23 throw it all against the wall and some of it's going to stick.
24 So that doesn't make any sense to me whatsoever, why you would
25 present the testimony of Mr. Bacon and Mr. Montgomery on the same

1 point when they contradict each other.

2 Ladies and gentlemen, I think the greatest example of,
3 I called it overreaching, but now I'm just going to call it flat
4 out deception, is the government's failure to call Mark Herbert
5 to testify in this trial. TM, Tony Montana.

6 Mr. Harding questioned him and said, Well, I told you I
7 didn't believe you. I mean, I guess if that's what we're going
8 on, I guess we don't really need you. We don't need jury service
9 in America if Mr. Harding's going to make a unilateral decision
10 that he doesn't believe someone. So I'm not going to call this
11 witness because I don't believe him.

12 Let me present an alternative theory of why this
13 witness wasn't called. I'll do this in conjunction with whether
14 or not you should really believe Mr. Hayes. Okay?

15 Now, Mr. Hayes is questioned shortly after one of the
16 homicides and he says, I didn't see Shelton or Bo that night.
17 That was statement number one. Okay? I didn't see Shelton or Bo
18 that night. And then there's statement number two where he says,
19 I saw Shelton that night. Mind you, he hates Shelton. I saw
20 Shelton that night. I didn't see Bo. What does Bo do? Bo's a
21 producer, not a drug dealer, not a guy who got guns from me.
22 He's a producer. That's statement number two.

23 Statement number three is the infamous Claudus Lassiter
24 letter. Okay? And Mr. Hayes, on his third trip around, now
25 says, I got this letter, TM got this letter, and I opened it and

1 I saw this contract or request for a contract to murder Mr.
2 Lassiter. Well, where's the letter? I threw it in the toilet.
3 Of course you did. God forbid we would actually have the
4 evidence instead of having to take the word of someone who
5 admitted to lying before the grand jury, but we don't.

6 And we know Mr. Herbert's out there because the letter
7 was addressed to him. And according to Mr. Hayes, he's the one,
8 he opened it. It was his letter. It came to him to be forwarded
9 to Shelton Harris. But Mr. Herbert in his grand jury, remember,
10 in 2005, he says, I never opened any letter that went to Shelton
11 Harris. I never opened it.

12 And so when I was questioning Mr. Hayes about this, I
13 never Mr. Herbert. He testified, he met me two week ago. He
14 never met Mr. Herbert in my life. I'm sure Mr. Herbert's going
15 to testify and back all this up.

16 No, he's not going to testify. And then, maybe I
17 should call this guy. I mean, he's the one that would
18 corroborate what Mr. Hayes says. I mean, if the government's not
19 going to call him and Mr. Hayes is a nut, I should probably talk
20 to this guy. I mean, after all, this is a pretty critical thing
21 according to Mr. Hanlon's, his Power Point presentation. This
22 shows the relationship and how these guys are protecting each
23 other.

24 And I think he even talked about the fact that all
25 these defendants had a little part of that Claudus Lassiter thing

1 because the protection gig is on.

2 You saw Mr. Herbert. So I met with him. And now
3 there's an intervening event, if I didn't mention this.

4 Mr. Hayes gets arrested. And now what does he need?
5 He needs the currency that only the government can provide. He
6 needs -- excuse me -- he needs, he needs a deal. So now we're at
7 the statement number three, or are we on to four now? Where I
8 got the letter and not only did I get the letter, but Bo's not a
9 producer. Bo's a drug dealer. Not only is Bo a drug dealer, he
10 deals with Shelton. Because remember, we got to be an
11 organization. You can't just sell. Mr. Herbert testified,
12 though, yeah, Shelton sold but he didn't buy his drugs from Bo.
13 But they didn't call Mr. Herbert. And of course, the one guy,
14 the one guy who doesn't have a deal is a liar.

15 This isn't my witness, ladies and gentlemen. Okay? I
16 called him but I called him not because I say what he said on the
17 stand is true, although I do, I called him because they didn't,
18 because they are trying to deceive you by presenting testimony of
19 Mr. Hayes and then not presenting the testimony of Mr. Herbert.

20 And then I think Mr. Hanlon used the word "laughable."
21 You want to know what I think is laughable? They say believe Mr.
22 Hayes, but don't believe Mr. Herbert. Let me ask you. Who had
23 the deal? Hayes has a deal. Herbert doesn't. Who lied before
24 the grand jury? Hayes. They're going to say Herbert did, too.
25 All right. Let's say he did. Well, that's a wash. But in the

1 government's rose-colored glasses, only what they present and
2 only what they believe is true. Mr. Herbert couldn't be telling
3 the truth because it's not, it doesn't fit with our theory.

4 So why didn't they call him? And what else is out
5 there that they didn't call? I tripped and fell over Mr.
6 Herbert. How many other witnesses are out there that we didn't
7 hear about?

8 Same thing, ladies and gentlemen. Let's just throw it
9 against the wall and see what sticks. The voice mail. They
10 presented the testimony of Ms. Wyche, who said originally, I
11 think she said that it was Mr. Martin and Mr. Mitchell on the
12 tape. And then she backed off of Martin. She's going to stick
13 by Mitchell, and we know why, because that was the rumor on the
14 street. How many rumors did we hear about in this trial about
15 what was, what people were talking about, that the government has
16 now presented not as rumor but as evidence.

17 So Ms. Wyche comes in and says, it was Bo and it was
18 Martin down there. And they know it was Martin because he says
19 it's Shorty. He's the guy who uses the word "Shorty." Then they
20 brought in Mr. Hayes.

21 Bear in mind that Mr. Hayes, through one, two, three,
22 four different version of events, they don't play him the tape
23 unless he's signed, sealed and delivered, September, 2008, two
24 weeks before trial. Now we're going to play him the tape because
25 he's not, he doesn't have a stake in this. So he's going to tell

1 us the truth.

2 He only knows two voices here. Who's he going to
3 identify? The two people that he knows. And what does he
4 attribute to them? He attributes to them both saying the word
5 "Shorty."

6 So again, ladies and gentlemen, I don't think this is
7 my opinion. One person said Mr. Martin said Shorty. Another
8 person said Mr. Mitchell and/or Mr. Harris said Shorty. Well,
9 that's inconsistent. I don't think that's a stretch, I mean, to
10 say that those are starkly inconsistent things.

11 But again, just throw it all against the wall. We
12 throw enough mud, some of it has to stick.

13 The final thing, ladies and gentlemen, I would like to
14 talk to you about in terms of the government overreaching is the
15 testimony of Mr. Dobropolski. I think other witnesses or other
16 defense counsel will talk about his credibility or lack thereof.

17 But one thing that I think is curious is that, you
18 know, Mr. Dobropolski, you're going to view his testimony with
19 caution because the man is a wife beating, thieving thug.

20 MR. HARDING: Objection.

21 THE COURT: Overruled.

22 MR. LAWLOR: But he comes in here and says, Rock told
23 me X, Y and Z. And then he's on tape and none of it's there.
24 This was in the 21st century, ladies and gentlemen. We're not
25 sitting through events that happened 50 years ago.

1 And he says that, he also says that Rock was recruiting
2 him. And then Rock gets out and Rock never calls him. Rock does
3 not call him one time. It's Dobropolski that's pursuing Rock.
4 But the government tells you that Rock said these things, number
5 one, not on tape, and that Rock was pursuing Dobropolski. When
6 we get out, it's completely the opposite.

7 So ladies and gentlemen, those are, I think, eight or
8 nine different examples.

9 Now, the government, again, they put all of this
10 through rose-colored glasses. None of their witnesses have any
11 credibility problems. They may be murderers. They all lied
12 before the grand jury. They've given ten inconsistent
13 statements. It doesn't matter.

14 It's almost, it's an admirable thing because they both,
15 in opening Mr. Harding, and in closing, Mr. Hanlon, they tell the
16 story as if they're reading from a non-fiction book and there are
17 no issues whatsoever that you need to resolve. The only thing I
18 can say to that is thank God we have the 12 of you and common
19 sense on your side to assess this evidence.

20 Now, getting into the substance of this case, ladies
21 and gentlemen. And I already talked about this. I'm going to
22 talk about the RICO conspiracy and the drug conspiracy. But I'll
23 try not to be redundant.

24 But ladies and gentlemen, go through the arrests.
25 That's stipulation one, I think, with all the different, all the

1 different drug arrests. None of these individuals, save Gardner
2 and Martin, are ever arrested together. Okay? And you go back
3 years and years and years and they're all dealing small amounts
4 of drugs, I would say, relative to what we've heard from the
5 other witnesses. And they're not arrested together, save Gardner
6 and Martin, which belies, period, plain and simple, the notion
7 that this is an organization.

8 There's no organizational structure, ladies and
9 gentlemen, because there can't be because in 1994 my client's a
10 baby, and thereafter, until around 2000, he's either at the
11 Hickey School or in college. He's not arrested during that time.
12 He's not associated with, he doesn't even know Mr. Harris until
13 2001. He obviously knows Mr. Gardner and Mr. Martin. But he's
14 not arrested with them.

15 I'm not going to say he was going to church every
16 Sunday and on his best behavior. But the issue isn't whether or
17 not Mr. Mitchell has ever sinned. The issue is whether or not
18 this is an organization. He's never arrested with them.

19 As I said, Mr. Bacon said he was small time. Remember
20 that? Mr. Jacquetta Smith said he was small time. Ms. Duganne
21 said he was small time. And that's shown by not only is he not
22 arrested with these other folks, but when he's arrested he
23 doesn't have weight on him. Mr. Harding said in his opening that
24 these guys developed into wholesale distributors. I never saw a
25 shred of evidence about that. That's also belied by the

1 evidence.

2 They don't deal together. All the witnesses said, most
3 of the witnesses you heard about, and I don't have time to go
4 through every one, but the witnesses said that they didn't deal
5 together. They dealt in separate neighborhoods to the degree
6 that they dealt at all.

7 And finally, if this is an organization, a RICO
8 organization like the Rice organization, where are the trappings
9 of wealth? Mr. Mitchell lives, until he moved to Valdavia
10 shortly before his arrest, he lives with Jacquetta at her mom's
11 house.

12 Shelton, after he got kicked out of his mom's house,
13 was squatting. I don't know where Mr. Gardner and Mr. Martin
14 lived. I think they both primarily lived with parents.

15 But where's the bling? Where are the cars? Where's
16 the Rolls? I mean, that's a racketeering organization, ladies
17 and gentlemen.

18 I mean, look at the instruction. I beg w look at the
19 instruction. But also, use your common sense. Are these a bunch
20 of chump change dealers, petty dealers from time to time, or is
21 this a racketeering organization?

22 And to that degree, Shakedown. I mean, if Mr. Mitchell
23 is this big time racketeer, why is he doing Shakedown? Now,
24 they're going to say it's part of the drug conspiracy. I can
25 tell you, nothing's further from the truth. Every witness who

1 came in here, who talked about Shakedown, and think of it what
2 you will, but it was a sincere effort by Mr. Mitchell to get off
3 the street. That's what it was. It's not evidence of being a
4 racketeer. I mean, it was small time.

5 TM said he took the CD's and even brought them home,
6 burned them on his home computer. And they just wrote Pure Shit
7 on it with a marker. It was small time but it was an effort.

8 I mean, the time line, ladies and gentlemen. Talk
9 about organization, a lack of organization. A continuing unit,
10 the instruction says. 1994, Bo was 17, he's at Hickey. '96,
11 '97, he's away at college. He doesn't even know Rock until 2001.

12 All the evidence is, is that they were doing this rap
13 thing as a serious endeavor, or trying to. Martin and Mr.
14 Gardner were both away in jail. You heard evidence that Mr.
15 Martin got out one time from jail. He did a stretch of a couple
16 years and he comes out and he goes and talks to somebody and
17 says, you know, I need a racket.

18 But if he had an organization, if these guys were a
19 continuing unit of racketeers, why doesn't he just roll right
20 back into that? Because it didn't exist.

21 The McCaffity/Brown murders. You know, I hate to say
22 this, ladies and gentlemen, because the man was killed. I don't
23 know that Lisa Brown ever did anything wrong in her life other
24 than know Mr. McCaffity, which would certainly be no sin. So her
25 death is certainly a tragedy. But Mr. McCaffity was in the game.

1 Okay? And we heard from witness after witness. And when you're
2 in the game, you could get killed for any reason or no reason.

3 He knew Rahman. He worked with the Rice brothers. Mr.
4 Benson, Detective Benson said that he was known for robbing and
5 killing people. And the evidence that we have that supports the
6 notion that Mr. Mitchell killed this man are a bunch of phone
7 calls between Mr. McCaffity and Mr. Mitchell.

8 I don't dispute whatsoever that those phone calls took
9 place and they took, they took place that night, that day. I
10 don't dispute those phone records at all, nor the records from
11 the month before that, however long before that, that showed that
12 these guys knew each other. So the fact that Mr. Mitchell and
13 Mr. McCaffity are talking to each other that night is evidence of
14 nothing. It's evidence of nothing.

15 I have a cell phone, ladies and gentlemen. If you
16 looked at my cell phone records for the last month, you would see
17 two sets of calls primarily. Ms. Rhodes, you would see on there,
18 five times a day because we're talking about the case as we're
19 working on it. My wife, because I call her at every break. We
20 have a little baby. How's your day going? How's the baby doing?
21 What are we having for dinner?

22 God forbid one of them ended up dead. But that's not a
23 fact of any wrongdoing. It's proof that these people knew each
24 other and talked on the phone. And that's all it is.

25 What the government does, ladies and gentlemen, has

1 done five or eight different times, is they make up these charts.
2 And it's like the boogie man. Look, look at the chart. And they
3 make Mr. Mitchell, it's like a mug shot. Look, he talked to Mr.
4 McCaffity so he must have killed him. But that's not evidence of
5 that at all.

6 They're going to fall back on this Hammerjacks thing.
7 Now, I'll be the first one to tell you that, again, the
8 government says, Well, we're not, you know, we don't really care
9 what happened there. It's the point that the Rice brothers put
10 out a hit on Mr. Mitchell and that spooked him. And he got word
11 that Mr. McCaffity was going to take the hit or do the hit and
12 kill him, and he jumped first.

13 You know what we call that, ladies and gentlemen of the
14 jury? A big fat theory, lacking in any kind of proof whatsoever.

15 Did Mr. Mitchell get in a fight that night? Yes. Is
16 there any evidence that he stabbed anyone? No. Again, the
17 government overreaching.

18 They put the knife in evidence. It's only got Mr.
19 Mitchell's DNA on it. If he stabbed somebody with that knife,
20 wouldn't it have that person's DNA on it? The lab tech or the
21 scientist said as much. And why would Mr. Mitchell's blood be on
22 that knife? Because he got his face kicked in. If the cops
23 didn't show up, he probably would have got killed that night.

24 Then they say, Well, there's people out there talking
25 about the fact that there's going to be a hit up. The Rice

1 brothers are talking about this, they're going to put a hit out
2 on Willie. No evidence this gets to Willie until after he's
3 arrested.

4 They talked about Jaquetta Smith and they do an
5 interesting thing. Jaquetta Smith, Willie told her about the
6 fact that Woody, he heard that Woody picked up the contract after
7 he was arrested on April 1st, when he was incarcerated.

8 The evidence that Mr. Mitchell knew that there was a
9 hit out on him or knew that it was Mr. McCaffity who might have
10 picked up this hit? I don't think that he even picked it up.
11 Zero. You know why? Because there's no proof of it because it's
12 a theory.

13 Watching the government present this case sometimes is
14 like watching them trying to squeeze toothpaste back into the
15 tube, because they're trying to just make every single piece of
16 evidence fit with their theory whether it does or it doesn't.
17 And I will tell you that this doesn't.

18 What Willie told Jaquetta Smith after he got arrested
19 is not proof, number one, that he knew about McCaffity having a
20 contract out on him, because it's not even necessarily true, or
21 that he did anything about it.

22 Well, then, we have the phone records. Well, the phone
23 records prove nothing because, again, these people knew each
24 other.

25 Compare that evidence, ladies and gentlemen, to the

1 evidence of the Spence homicide. Okay?

2 Now, that's what evidence in a murder case looks like.
3 Not some rumors in a phone bill. Not rumors in a phone bill.
4 Eyewitnesses, ballistics, caught right at the scene. What do we
5 have here? Rumors about a contract that Willie may or may not
6 have heard of and the fact that he talked to someone that, by
7 everyone's admission, he knew, who came to visit him after he got
8 knocked up and he was at home recuperating.

9 The Wyche brothers. Same thing, ladies and gentlemen.
10 I don't say this to disparage them because I think it's a tragedy
11 that any young men would be in this lifestyle or that they would
12 get killed. But it's a dangerous game. We heard that. Darryl
13 Wyche had been kidnapped on numerous occasions. That had nothing
14 to do with Mr. Mitchell. How many times did he get kidnapped?

15 He owed, according to many witnesses, he owed his
16 supplier \$100,000. That's dangerous, ladies and gentlemen, to be
17 in this game, owe someone that kind of money, meaning as he's a
18 target.

19 Now, Mr. Hanlon didn't talk about this whatsoever
20 because he tries to just, you know, well, Mr. Mitchell said this.
21 Mr. Mitchell said it then it's categorically false. But Jaquetta
22 said that they were moving the night before the Wyche brothers
23 got killed. He was home packing with her. He never left the
24 house. That's what she said.

25 All right. Well, she went to bed at 9:00. Obviously,

1 he could have left the house. There's certainly phone traffic.
2 Again, I don't dispute that for one second, this phone traffic.

3 Mr. Mitchell says in his statement that he was setting
4 up Mr. Wyche with someone that he knew. What is so unbelievable
5 about that? Mr. Hanlon says, why would he do that? He said in a
6 statement to the police, which he didn't have to give, that he
7 was setting these people up and he was going to get a cut. That
8 makes perfect sense to me. I mean, if he's a drug dealer, he's
9 going to set these people up, save himself the time, and he gets
10 a piece of the action. So he said that.

11 And the movie thing, ladies and gentlemen. Mr. Hanlon
12 finds unbelievable that he remembered the name of this movie.
13 But let me ask you this. If you play something in your life in
14 context, doesn't it make it more easy to remember? Now, Mr.
15 Mitchell said, Jacquetta said they were moving the next day. So
16 this was only two and a half weeks later. This isn't six months
17 later. But certain things you remember.

18 I'm going to draw a bad analogy. I admit it's a bad
19 analogy, but I was just sitting over there, thinking for a
20 minute. I remember the day my son was born because it was only
21 six months ago. The night before he was born, I remember exactly
22 where I was. We had dinner. My wife and I had dinner at my
23 partner's house. I remember everything about that night.

24 Now, if there was any other night, I wouldn't remember
25 where I was May 17th, but it was the night before my son was

1 born. So I remember where we were for dinner and I remember half
2 the conversation.

3 The date after my son was born, May 19th, John Lester
4 of the Boston Red Sox pitched a no hitter. And I know that, the
5 date, because it's in context. Now, granted, moving is not
6 exactly like having a child. So I concede it's a bit of a bad
7 analogy. But why would he remember that he was watching a movie?
8 Because it's in context. He was moving the next day.

9 And ladies and gentlemen, the reason it's not
10 unbelievable, it's believable, is because if he wanted to have an
11 alibi, think of something better than I was watching a movie at
12 home. You know, why didn't he say, I was with Jaquetta? We were
13 up playing Parcheesi. He said, I was home watching a movie.
14 There's nothing unbelievable about that.

15 Now, again, ladies and gentlemen, we have the phone
16 chart. Two phone charts. Okay. Now, I just sort of walked you
17 through and you've seen this. But Mr. Mitchell and Mr. Wyche
18 were obviously talking that night. Mr. Mitchell explained that.
19 What the government tries to do is they try to make the chart
20 into sort of another bogeyman thing by saying it was a set-up
21 because Mr. Mitchell was also talking to Mr. Gardner and Mr.
22 Martin that day.

23 But look at the chart that they presented. These guys
24 talked every day. Okay? I talked about my phone calls. If you
25 looked at my cell records, it would be two sets of calls on

1 there, Ms. Rhodes and my wife. If God forbid Ms. Rhodes got
2 killed, are you going to go look at my phone records and say,
3 Jesus, Lawlor and his wife killed Ms. Rhodes? These are phone
4 records. They don't prove anything.

5 Again, compare it to the evidence in the Spence case.
6 Eyewitnesses. Ballistics testimony. Witnesses right at the
7 scene. Is it that implausible that Willie Mitchell would be
8 talking on the phone to Mr. Wyche, who he knew, like Mr.
9 McCafferty, he knew the man? Darryl was his connect.

10 Again, why, it doesn't make sense why Mr. Mitchell
11 would do this, anyway. Why would he kill his own connect all of
12 a sudden? Him and Darryl are friends. There's no bad blood.
13 Mr. Hanlon tries to make references to some bad blood.

14 Back in 2000, which is just, it lacks any sort of
15 content or context. Certainly would have nothing to do with what
16 was going on in 2002.

17 But why would, all of a sudden, somebody he knows,
18 somebody he's friendly with, why would he do that? Why would he
19 kill that man then, all of a sudden for no reason? It's a
20 robbery. Well, that doesn't make sense because you're giving up
21 your connect. But okay. If it's a robbery, why don't they
22 search, why don't they search the car? I mean, if he's a drug
23 dealer, he's going to know that there's a stash. You don't just
24 take the bag. The trunk, just open, open the console. Remember
25 the McCafferty thing? The console was ripped off.

1 So if these are so tied together, why didn't they
2 search the car? And it was right there in the open.

3 But who, who would have just taken the bag? Who would
4 have known what was in the bag and taken it? Dwayne Denham would
5 have. And, you know, he doesn't have any motivation to do this,
6 you know, because he's a good guy.

7 Remember Mr. Ellington, the government's own expert?
8 He said that, you know, this happens all the time. And you know
9 this. These murders are, sadly, all too common. Why wouldn't
10 Deeze do this?

11 And if he's so, if he has nothing to hide, why did he
12 lie before the grand jury? Why does he need a proffer letter?
13 He said he doesn't know where the stash was in the car. He would
14 have known what was in the bag. I mean, he lied on the stand.
15 He says he doesn't carry a gun but he's protection. That doesn't
16 even make sense. That's like Dobropolski. Everyone else carries
17 a gun when they're not even protection. If you deal, you've got
18 to carry a gun or somebody's going to take your stash.

19 That's why Willie had a gun. Again, I don't condone
20 it. I don't ask you to condone it. I know these are sort of
21 frightening concepts.

22 But why does Deeze lie about that? Why did he lie to
23 the grand jury about the trip to Washington? Who went, when they
24 went, what they sold. You know, the first time he said, Well, we
25 didn't make any deal. Then the second time he says there was a

1 deal.

2 Seems to make perfect sense to me that he would know.
3 He travels with Darryl. So he knows what's in the bag but he
4 doesn't know, according to his own testimony, where the stash is
5 in the car. So he doesn't think to look in the trunk. He grabs
6 the bag and runs.

7 What are they going to say? The voice mail. Well,
8 ladies and gentlemen, again, don't listen to me and don't listen
9 to the government. Go back and listen to the voice mail
10 yourselves. I implore you to.

11 What you'll find, I think, there's a few different
12 things. One, it's unintelligible. And I think if you're honest
13 with yourselves and you listen to that, to the degree that you
14 can make out any words, if you would compare them to someone's
15 voice, you can't. And the government presented all its
16 inconsistent testimony about it, which I discussed and I won't
17 discuss again because it's an effort to just throw a bunch of
18 stuff against the wall, and we know some of it will stick.

19 But the final thing I'll say about that is the last
20 thing that the government hangs their hat on about this tape.
21 They say, we know it's Willie because compare it to the phone
22 records. He's there with Shelton because he says, I'm going to
23 call your house, Shorty. And I'm paraphrasing. And then there's
24 a phone call from Willie's cell phone to Shelton's landline, at I
25 think Shelton's mother's house. But again, common sense. If

1 Willie's in the car with Shelton, why is he calling Shelton's
2 house? Is he going to talk to his mom? That doesn't even make
3 sense. But the government has, again, this tremendous ability to
4 say things with such conviction that we just stop all belief and
5 wonder.

6 But I still wonder why does Willie Mitchell, if he's in
7 the car with Shelton Harris, why does he say, I'm calling your
8 house, and call Shelton's house? He wouldn't. So that is just
9 totally inconsistent and belies the fact that it's them on the
10 tape.

11 But ladies and gentlemen, ultimately, I think you have
12 to listen to that tape yourselves. And think of the quality of
13 it, think of the inconsistent testimony you've heard, and think
14 of the fact that there are other versions floating around out
15 there.

16 You know, Agent Benson, when he testified before the
17 grand jury, he said that there was bup, bup, bup, B-U-P. Here,
18 though, the new version is buc, buc, buc, B-U-C. Why? Because
19 Shelton's lyrics say, I'm buc'ing. So we got to tie it all
20 together even if we got to change it up a little bit.

21 But ladies and gentlemen, I think if you look at the
22 evidence of the involvement, again, compare it to the evidence of
23 the Spence homicide and then think, what do we have? We have a
24 voice mail tape that is unintelligible and we don't know who's
25 voices are on there. And we have phone records. And then we

1 have two of the participants who have alibi witnesses. I'm not
2 going to talk about Mr. Martin's alibi. Again, the government
3 just, can't be, can't be possible. Don't believe Ms. McCoy
4 because, you know, she's not a government witness, she doesn't
5 have a deal, you can't believe her. I'm going to let Mr. Martin
6 and his counsel speak for him on his alibi.

7 But the government's presenting this theory to you
8 that's belied by credible evidence. Ms. McCoy is a credible
9 witness. Jaquetta Smith is a credible witness. But they don't
10 have deals, they haven't lied before the grand jury, so
11 definitely don't believe them.

12 Finally, ladies and gentlemen, I do have, I think I'm
13 running a little long, candidly. But I will, I do believe I only
14 have about five or ten minutes left.

15 THE COURT: Five.

16 MR. LAWLOR: Five. The lyrics. We could probably
17 debate this all day, ladies and gentlemen. I think the simple
18 thing I'm going to ask you to do is apply your common sense. I'm
19 sure most of you have heard this, have heard music like this,
20 some probably more than others.

21 The government wants you to say, well, it's all true
22 and it's a confession, essentially, by Mr. Harris. And you got
23 the Woody/Whoodi thing. Just one quick point on that.

24 Look at that line because to me that sort of
25 encapsulates the whole issue. Mr. Hanlon says it's all true, so

1 believe it. Harris wrote Whoodi, dot-dot-dot, a 45. I killed
2 Whoodi with a .45. Woody, they're trying to say. I killed Woody
3 with a .45. I'm paraphrasing it. He didn't get killed with a
4 .45. He got killed with either a .38 or a .357. So is it all
5 true or is it not true? And it's not true because it's art.

6 And it may not be good art. You may loath it or you
7 may love it, but it's art. And again, watching the government
8 try to make those lyrics -- I'm going to let you go through them
9 because, candidly, I don't have the time right now. But watching
10 the government trying to tie those lyrics to this case, again,
11 it's like watching someone trying to put toothpaste back in the
12 tube because you're taking, "I shot someone, I deal crack."

13 Ms. Rhodes played one song in opening that was all
14 about glorification of guns and drugs, and you know this. It's
15 in movies. It's in video games. And it's in rap lyrics.

16 So look at them yourself. That's what I'm imploring
17 you to do through all your deliberations in this case, ladies and
18 gentlemen. I don't ask you to accept everything I've said right
19 now. But I'd ask you not to take everything the government has
20 said at face value either. I think they're asking you to do
21 that. Just trust us. We're the United States government. Just
22 trust us.

23 But, you know, these aren't just four defendants,
24 ladies and gentlemen. And I think I'll wrap up with the flesh
25 and blood stuff and how I would like you to approach this.

1 But you know, these aren't just four defendants.
2 That's Willie Mitchell, Shelton Harris, Mr. Martin, and Mr.
3 Gardner. These are four young men. And their fate is in your
4 hands. I'll submit to you in 2005 what they did may have been
5 foolish, may have been disrespectful, but I think what they were
6 saying, and what I'm asking you right now is that this is not a
7 defendant. This is Willie Edward Mitchell, II, a live flesh and
8 blood man. His fate is in your hands. And that's what he stood
9 up to say.

10 And you know what I say about that? The notion that
11 that's criminal conduct is a joke. Okay? This is a courtroom.
12 This is that man's trial. He had every right. It may have been
13 a little disrespectful, a little discourteous. He may have
14 disrupted the proceedings. But this man is on trial for his
15 life.

16 And what I think he said is, hey, it's the entire
17 United States against Willie Edward Mitchell, III. I'm not a
18 racketeer. I'm not a murderer. I'm a live flesh and blood man.
19 I've been in jail for two and a half years. You had in me in
20 state court for two years. Now you rolled me over here. It's
21 been two and a half years and I've been sitting here. And now
22 you're calling me a defendant. I'm not even a man. I'm a
23 defendant.

24 And so that's what he stood up to say. Is that a
25 crime, ladies and gentlemen? Even if they all said it. Okay.

1 It was a phenomenon that occurred in this courthouse, in this
2 district. But I don't think it's evidence of conspiratorial
3 conduct. I think it's applaudable. I am not a defendant. I am
4 a live flesh and blood man.

5 And that's what I'm going to ask you to remember,
6 ladies and gentlemen, during your deliberations, that that is not
7 a defendant. This is a man, a live flesh and blood man who's
8 being accused of hideous things. And there is not sufficient
9 proof to convict him.

10 So I'd ask you when you go back there, don't accept the
11 government's whitewash of the evidence. Look at it critically.
12 And I think when you look at it critically, you will acquit him
13 of all counts, and I would ask you to do that. Thank you.

14 THE COURT: Thank you, Mr. Lawlor. Ladies and
15 gentlemen, we'll break for the day.

16 Mr. Lawlor, could you move the easel, please, or Ms.
17 Arrington? Thanks. That's great for now.

18 What I anticipate, ladies and gentlemen, tomorrow
19 morning I'd like to start promptly at 9:30. We had slight
20 problems with the technology this morning that delayed things.
21 But I think it's now in place.

22 I would like to start promptly at 9:30 tomorrow. We'll
23 begin with Mr. Martin's closing argument. We'll go to Mr. Pyne,
24 and then Mr. Kurland will have his say. The government will have
25 a slight rebuttal, and that will take us through to lunch time.

1 Then we'll break for lunch. And then I'll have my instructions
2 for you on the law.

3 I don't anticipate that there will be time for you to
4 begin your deliberations tomorrow. I suspect that that will have
5 to wait until Friday. But we'll see how it goes.

6 In the meantime, continue to adhere to my instructions.
7 Have no discussion about the case. Avoid any media reports of
8 the case. Conduct no investigation. Continue to keep an open
9 mind about all issues.

10 Please leave your note pads on your chairs. Have a
11 pleasant evening. We'll see you at 9:30 tomorrow morning.

12 (Jury exits the courtroom.)

13 THE COURT: Have counsel had an opportunity to review
14 the proposed verdict sheet? Okay. If you haven't, please do so
15 quickly and get any concerns to me.

16 I anticipate that I will send you within the next
17 couple of hours what I hope will be my final charge. And I'd
18 like to hear from you as soon as possible if you are dissatisfied
19 with any aspect of it.

20 Mr. Harding?

21 MR. HARDING: Judge, I don't know whether Mr. Lawlor
22 did this deliberately. I will assume not. But he said --

23 THE COURT: Let's assume not.

24 MR. HARDING: Yes. He said his client was on trial for
25 his life. And because of that, I'm going to ask that the Court

1 instruct the jury that this is not a death penalty case.

2 THE COURT: I don't think I need to do that, Mr.
3 Harding. It's a colloquial use and it is said sometimes. In
4 fact, I'm pretty sure -- no, I'm not sure I told the jury that
5 during voir dire. But I don't think the jury thinks for one
6 second that this is a death penalty case.

7 MR. HARDING: I've had this come up before, Your Honor.
8 I think there is a risk.

9 THE COURT: Well, of course, I've got the standard,
10 punishment is not your concern.

11 MR. HARDING: I would ask that the Court, when it gives
12 that instruction, simply insert a few words to the effect that
13 this is not a death penalty case.

14 THE COURT: I see. In other words, you weren't asking
15 me to do it first thing tomorrow.

16 MR. HARDING: No. It's fine if you do it during jury
17 instruction.

18 THE COURT: Okay. I'll give some consideration to
19 that.

20 MR. HARDING: Thank you.

21 MR. KURLAND: Your Honor, just as a scheduling issue.
22 I have no problem going before lunch, the way that the Court set
23 it out. Mr. Lawlor went about an hour fifteen. I'm planning on
24 only going an hour but I would hope that, I know that if I'm
25 going right at lunch and we go from 1:45, the jurors are going to

1 have their stomachs growling like everybody else, but I don't
2 want to be cut off short or treated differently simply just
3 because of an impending lunch. But my goal is to keep it to an
4 hour. I mean, the Court, I assume, will give the instruction.

5 THE COURT: No. I never interrupt a lawyer who's
6 arguing before lunch. Take -- credit Mr. Hanlon. He had the
7 classic line. I never interrupt a lawyer before lunch because
8 you really are the only thing standing between --

9 MR. KURLAND: All right.

10 THE COURT: -- between the jury and lunch. Mr.
11 Flannery?

12 MR. FLANNERY: Your Honor, I just wanted to bring to
13 the Court's attention that I would like to submit, I can do it to
14 you in an e-mail, going back to our charging conference, how we
15 had discussed an instruction based on the pattern of racketeering
16 activity, and that that does not satisfy the proof of the
17 enterprise.

18 And I specifically referred to in Mr. Hanlon's opening,
19 he references, the very first bullet point for the proof that
20 there's an informal organization here was, he actually listed was
21 the pattern of crimes that they had committed. And by making
22 that presentation to the jury, we would suggest that we be able
23 to ask for an instruction specifically along the lines that the
24 pattern that any of these individuals may have conducted does not
25 satisfy the enterprise.

1 THE COURT: Okay. If you can, just submit something
2 either by e-mail or file it and I'll consider it. But I didn't
3 think that Mr. Hanlon's Power Point went over the line. But I'll
4 look at whatever you submit.

5 MR. FLANNERY: Thank you, Your Honor.

6 THE COURT: Mr. Coburn, you're still here?

7 MR. COBURN: Thank you, Your Honor.

8 THE COURT: How wonderful.

9 MR. COBURN: Kind of Your Honor to say that. Just
10 bringing up the rear here. I wanted to just very briefly tell
11 Your Honor how strongly I agree with the Court's initial instinct
12 with respect to Mr. Harding's request about that insertion in the
13 instructions about this not being a death penalty case.

14 I'm aware of absolutely no basis for that. And I can
15 tell Your Honor my own feeling about it, I mean, based on the
16 cases I've tried, because Mr. Harding says, you know, he's
17 encountered this issue before. I have never in my lifetime
18 experienced or heard of that language being inserted in any
19 charge in any case in the United States. And I would venture to
20 guess it's never been done.

21 But, you know, in context, it's not going to make any
22 sense to the jury and it's going to sound like, even though I
23 know this would not be the Court's intention by any means, it's
24 going to sound to their ear, since it's not going to make any
25 sense in context, it's going to sound like this isn't that

1 serious a case.

2 THE COURT: All right. Thank you, Mr. Coburn. We are
3 in recess until 9:30 tomorrow morning.

4 (Recess at 5:21 p.m.)
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REPORTER'S CERTIFICATE

I, Mary M. Zajac, do hereby certify that I recorded stenographically the proceedings in the matter of USA v. Willie Mitchell, et al., Case Number(s) AMD-04-029, on November 19, 2008.

I further certify that the foregoing pages constitute the official transcript of proceedings as transcribed by me to the within matter in a complete and accurate manner.

In Witness Whereof, I have hereunto affixed my signature this _____ day of _____, 2009.

Mary M. Zajac,
Official Court Reporter

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